



We have separated amicably, what now? Your guide to family law Consent Orders

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E&A Lawyers has made the decision to no longer provide family law services. While we no longer take on any new family law matters, we are happy to assist by referring you to lawyers specialising in this area. Please don't hesitate to contact us if you would like a referral.

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You have done the hard work by sitting down with your former partner to come to an agreement about [how you want to divide your assets \(to finalise your property settlement\)](#) and/or the future [parenting arrangements for your children](#). So, what comes next?

To formally divide your assets and implement your agreement, the usual next step is the drafting of Consent Orders.

What are Consent Orders?

Consent Orders are a written agreement between the former spouses that is approved by the Family Court of Australia.

Once the Consent Orders are made by the court, they are legally enforceable. Consent Orders can be made in relation to parenting matters, or financial matters, or both.

How do we make Consent Orders?

This is where your family lawyer helps you. We assist you to document your agreement with the preparation of Consent Orders for filing in the court.

As lawyers, our role is also to ensure that what you and your former partner have agreed to is enforceable and is also just and equitable.

Even if you and your former partner agree on a division of assets, or on parenting arrangements for the children when the Consent Orders are filed in the Family Court of Australia they must be reviewed by a Registrar of the court before being made. If the Registrar does not think that the Consent Orders are just and equitable, or fair, then they will not be made.

Can a lawyer act for both parties?

We are unable to act for two parties in circumstances where there is a conflict of interest. Accordingly, we can only represent one party, even if you are both in agreement.

The process for obtaining Consent Orders

There are a number of steps required to have Consent Orders made in the Family Court.

Step 1

If applicable to your matter, full and frank disclosure of your financial position should be made by you and your former spouse.

In determining the asset pool, if any items of value are in dispute, then valuations will be needed. For example, a Real Estate Valuation on the former matrimonial home may be required particularly if one party is seeking to keep the home as part of the agreement.

Disclosure is important to ensure that you and your former spouse are aware of the current net asset pool for division between you. Further, if there has been a miscarriage of justice as a result of failure to disclose relevant information, then the Consent Orders may be overturned in the future.

Step 2

Negotiations begin.

This is usually undertaken by your family law lawyer sending an offer of settlement to your former spouse or their lawyer if they are legally represented, which confirms and sets out the terms that you understand have been agreed upon.

Step 3

There is often some back and forth correspondence between the parties as the terms are clarified and eventually finalised. This will also include lawyers ensuring your agreed terms are just and equitable.

Step 4

If the agreement includes a proposed split of your or your former spouse's superannuation, then your lawyer will need to provide notice of the intended Orders to the Trustee of the superannuation fund.

Consent Orders cannot be filed with the court until the Trustee of the superannuation fund has provided their written consent to the wording of the Consent Orders that will then bind the fund to making the superannuation splitting payment to either you or your former spouse.

Step 5

If agreement is reached, then your lawyer will draft an Application for Consent Orders and the Consent Orders.

The Application for Consent Orders will provide details of the current arrangements for the children (if applicable) and/or the current financial situation of both parties. This information will help the Registrar of the court to determine if the terms of the Consent Orders are just and equitable.

Step 6

The draft Application for Consent Orders and the Consent Orders will be sent to your former partner, or to their lawyer.

Your former partner will then need to add their own information where required and request changes if any, that they may wish to amend. This process may require negotiation between all parties until an agreement on the terms of the Orders and the Application may be reached.

Step 7

When the Application for Consent Orders and the Consent Orders are agreed upon by both parties, then your lawyer will answer any questions you may have and will provide you with written advice on the effect of the Consent Orders before you decide to sign them.

Step 8

When both parties have signed the Application for Consent Orders and the Consent Orders, then the documents are electronically filed with the court.

Step 9

The Consent Orders will be reviewed by a Registrar of the Family Court of Australia and a decision will be provided as to whether they are approved by the court.

Step 10

If approved, the Consent Orders are then enforceable Court Orders.

If they are not approved, then further work may need to be done to satisfy the court's requirements.

If your separation is amicable and, for the most part, you and your former partner are in agreement about property settlement and childrens' matters, we can assist you to finalise your matter by way of Consent Orders.

Get help from a family lawyer

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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