



Crucial differences between divorce and property settlement

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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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This blog aims to dispel some common misunderstandings about the interplay between obtaining a divorce and finalising your property settlement formally. After a marriage breakdown, some people choose only to [get a divorce](#) or only [finalise property settlement](#). However, suppose you only get a divorce and do not finalise property settlement (in a binding manner). In that case, you may not be protecting your financial interests, both now or in the future.

A property settlement can be finalised by Consent Orders, a [Binding Financial Agreement](#), or by Final Orders from the Family or Federal Circuit Court of Australia.

All too many times, we hear the following questions or statements from parties that have separated:

"We have got a divorce, so we don't need anything else, right?"

"We decided to save the legal fees and amicably divide the assets ourselves. we will get divorced later to finalise it."

"We are going to get the divorce first and then sort out the property stuff later."

"Can you help me with the divorce? We don't need anything else, just the divorce".

What does a divorce do?

Once a Divorce Order comes into effect, it terminates your marriage. This allows you to re-marry in the future.

You can learn more about the process of divorce in our blog ["Getting a divorce in Australia"](#).

There is a common misconception that a divorce finalises all aspects of your relationship. Importantly, however, a divorce does **not** legally determine who gets what assets and liabilities in the marriage.

Finalising property settlement with Consent Orders

Consent Orders (along with options like a Binding Financial Agreement) serve to sever your financial relationship with your former partner on a final and binding basis.

This means that going forward, neither party can make a claim on each other's assets. Further, the parties must indemnify the other in relation to any liabilities incurred in their sole name.

We have already separated everything; there is no need for Consent Orders

Unfortunately, we have had clients who have agreed with their partners to divide all assets and liabilities in an informal, non-binding manner. This has resulted in disputes about that arrangement at a later date.

If you have obtained a divorce, from the date of the divorce, there is a [one-year time limit](#) to commence legal proceedings regarding property and [spousal maintenance](#).

Consider this scenario

- You've separated from your former partner and divided all your assets and liabilities;
- You've obtained a divorce;
- You start moving on to your next chapter in your life;
- One month prior to the time limit imposed on finalising property settlement, you are served with a letter from your former partner stating that Court proceedings will be commencing regarding property.

Similarly, imagine separating from your de-facto partner:

- You divide all of your assets and liabilities;
- You start moving on to the next chapter in your life;
- you win the lotto. How fantastic right? Yes!

But if you haven't [severed your financial relationship by Consent Orders](#) or other means and the time limitation period hasn't expired (two years from the date of separation for de facto couples), then your ex-partner is entitled to make a claim on some of those lotto winnings.

Consent Orders and the transfer of property

If you and your partner are both on title as joint tenants or tenants in common and one party will be retaining the former matrimonial home, then you should enter into Consent Orders to affect the transfer of this property from one party to another.

The benefits of doing so are to ensure:

- that this transfer is done correctly;
- that the other party is removed from any joint mortgage; and
- that there is no stamp duty paid on the transfer.

Which one is more important; divorce or property settlement?

Our advice is if you want to engage a lawyer to help with only one aspect (either the divorce or the property settlement), make it your property settlement!

From a legal perspective, severing your financial relationship on a final basis is far more important and more complex than terminating the marriage.

Get help from a family lawyer

The family law team at E&A Lawyers will be able to guide you through your property settlement needs. We look at your specific and unique circumstances to ensure we protect your financial future.

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

Contacting E&A Lawyers

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