



What is a partial property settlement?

Author: [Bridget Schultz](#)

Email: bridget@ealawyers.com.au

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Partial [property settlement in family law](#) matters is a distribution of assets of the property pool to one or both parties prior to final orders for property settlement being made. It may also be referred to as interim property settlement. Partial property settlement can be negotiated by agreement between the parties or, alternatively, with an application to the Court.

Why do separated couples seek partial property settlement?

Even the most amicable of family law matters can take a significant period to be finalised by way of Court Orders. A common question we are asked is, "*How do I pay my expenses and legal fees until the completion of my matter?*"

This question often arises in circumstances where a client's income does not meet their expenses, including rent, utilities, groceries, and legal fees. This can, understandably, be a source of frustration where parties know that there are funds in bank accounts that can be used to fund these expenses, but they do not have access to those accounts.

When can I apply for partial property settlement?

In circumstances where there are sufficient funds to distribute an equal partial property settlement to both parties, and this distribution does not affect the final property settlement, then a partial property settlement can be sought by one or both of the

parties.

What does the Court consider?

The case of [Harris \[1993\] FamCA 49](#) provides that when considering a partial property settlement, a Judge must be satisfied that the remaining property, after the partial distribution, will be adequate to meet the legitimate expectations of both parties in the event of the matter proceeding to final hearing.

Accordingly, any evaluation as to the merits of a partial property settlement will be conducted on a case-by-case basis.

For example, a partial property settlement of \$50,000 per party in circumstances where it is a short relationship with no children and a net asset pool of \$200,000 would carry significant risk.

By contrast, a partial property settlement of \$50,000 per party in circumstances where it is a 30-year marriage with children and a net asset pool of \$3,000,000 would carry significantly lower risk.

A partial property settlement can be achieved by both parties reaching a negotiated agreement and documenting that agreement or by way of an application to the Federal Circuit and Family Court of Australia.

Negotiated agreement for partial property settlement will save you money

In circumstances where an application to the Court would result in an Interim Hearing seeking Judicial determination of the merits of a partial property settlement, there are often significant legal fees incurred by both parties for the drafting of Court documents and appearance at the associated Court events.

Accordingly, where there is merit, most partial property settlements, wherever possible, should be negotiated between legal representatives for the parties without resorting to litigation.

If a negotiated outcome is reached, then the terms of the partial property settlement can be documented by way of Interim Consent Orders. These Orders will outline:

- the agreed amount for distribution;
- from which asset this distribution will occur;
- the method of distribution; and
- they will be signed by both parties.

The Consent Orders may also bind parties to do such things necessary to ensure that the distribution can occur. For example, the parties may be required to attend at the bank to sign any documents required for the distribution.

Partial property settlements are notionally added to the asset pool. However, they are ultimately deducted from each party's entitlement upon the calculation of the final property division. These funds are often used for legal fees and day-to-day expenses to ensure that parties to a family law matter can continue to meet their expenses pending final resolution of the matter.

Get help from a family lawyer

If you're separated from your partner or considering separation, and you're concerned about the process for property settlement or your entitlement to seek partial property settlement, you should seek legal advice from an experienced family lawyer.

Contacting E&A Lawyers

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

[02 9997 2111](tel:0299972111)

info@ealawyers.com.au

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