



Retaining assets in joint names after separation or divorce

Date: Sunday February 18, 2024

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.

[CALL US IF YOU'D LIKE A REFERRAL TO A FAMILY LAWYER: 02 9997 2111](tel:0299972111)

When a separation or divorce is being considered, a common question often arises of whether parties can keep assets in joint names, even after finalising their family law [property settlement](#). In this blog, we discuss the issue of retaining joint ownership of assets, like, for example, investment properties, after separation or divorce.

The difference between divorce and property settlement

Divorce and property settlement are displayed in the media and publicly as the same thing, and many people believe that getting a divorce finalises everything.

Contrary to popular opinion, this is not the case. Both aspects operate separately from each other. For more information about the differences, you can read our earlier blog, ["Crucial differences between divorce and property settlement"](#).

Understanding property division and Consent Orders

Consent Orders (along with options like a [Binding Financial Agreement](#)) can cover both [parenting arrangements](#) and property settlement aspects of a separation. In this blog, we will only focus on the aspects relating to property settlement.

Property Consent Orders serve to sever your financial relationship with your former partner on a final and binding basis. They enforce the division of assets and ensure that neither party has a legal right to any assets from the other party in the future. They also ensure that liabilities are only the incurring party's responsibility in the future.

Once Consent Orders are agreed upon by the parties, they are submitted to the Court to be reviewed to ensure they are [just, equitable and enforceable](#). Only after this will the Consent Orders be considered finalised or sealed.

What happens with joint assets?

When it comes to jointly owned assets, the requirements are that in accordance with section 81 of the *Family Law Act 1975* (Cth), the Court is to:

"as far as practicable, make such orders as will finally determine the financial relationships between the parties to the marriage and avoid further proceedings between them".

This means that the Court will look to ensure that orders specify how assets, including any assets in joint names, are to be either divided, sold or retained (by a single party).

Time frames will also be considered by the Court when reviewing documents, as there will be the expectation that all joint assets are separated as soon as possible after the sealing of documents.

The Court will always discourage the parties from having joint assets going forward for any longer than it takes to transfer to one party or sell the assets and divide the proceeds. The Court wants a complete financial settlement of the parties within a reasonable time frame and would not agree to the parties holding property or interests together indefinitely.

The risks of keeping assets in joint names after separation or divorce

All too many times, questions arise such as, *"Is it not easier to keep it in both our names until economic conditions change?"* or *"Can't we just separate now but keep the property in both our names until the kids are adults?"*.

Both of these questions are valid, however, as you would not have, finalised the severing of your financial relationship by formalising any property settlement agreement with Consent Orders, these considerations come with substantial risks, including the following.

1. You need to trust that your former partner will not:
 1. degrade or destroy the jointly held asset; and
 2. incur debts using any jointly held asset.
2. Any income or assets received by either party after separation and divorce may still be considered part of the marital asset pool in the future. This leaves the door open for one of the parties to seek to commence proceedings to formally divide the assets at

a later point in time.

While keeping joint assets in both names may seem like a great and mutually beneficial alternative to dividing all assets and liabilities, it comes with a number of risks that may cause issues that far exceed the initial benefits.

It is a good practice to consider the immediate and long-term impact if things do not go the way you expect.

Get help from a family lawyer

Although property settlement after separation may often seem relatively straightforward, several aspects are overlooked by many separating couples.

Seeking legal advice from an experienced family lawyer can be invaluable when you are considering separating as it can assist in clarifying your entitlements and rights under the *Family Law Act 1975*(Cth). Our family law team is here to guide and inform you to ensure you protect your financial future.

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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