

Property Settlement and Time Limits



Divorce

Family Law in Australia is based on a ‘no-fault’ principle. The only ground for divorce in Australia is 12 months’ separation. It is possible for you and your spouse to ‘live under the same roof’ and to still satisfy the required 12 months’ separation. When calculating 12 months’ separation, any periods of reconciliation that are less than three months long are not counted and do not stop a 12 months period from being calculated. You may apply for a divorce either individually or together. Divorce applications are handled by the Federal Circuit Court.

A Divorce Order becomes final one month and one day after it is made. Neither person can re-marry before the Order becomes final.

Once the Divorce Order has become final, you have a deadline of 12 months in which to start proceedings for property settlement, if not finalised already. After 12 months you must apply to the Court for leave to be allowed to start an application.

For de-facto couples it’s 2 years from the date of separation.

De-facto Relationships

A de-facto relationship (includes same-sex couples) is defined as “the relationship of a couple living together on a genuine domestic basis”. A de-facto former partner can pursue a property settlement where one of the following conditions exists:

- You have lived in a de facto relationship for at least 2 years; or
- You have a child from the relationship; or
- It would be unjust not to recognise a de-facto spouse’s financial or non-financial contribution.

Separated under the Same Roof

You may or may not still be living together as a couple (cohabiting). Sometimes couples cease their intimate relationship but continue to stay in the family home. You can still finalise your property agreement during this period and attend family dispute resolution if you wish.

There are no rules about who should move out. Consider factors such as who will have primary care of children in the short term and your individual financial circumstances. It is also important to consider the effect any move may have on children, or whether there is an issue of safety for you or your children because of the ongoing conflict between you and your former partner.

Deciding to move out;

- Consider leaving the home if it is affecting your own or your children's safety.
- Legal entitlements to a share in the property of a relationship are not affected by one former partner leaving the home.
- Leaving your home may limit your future access to property or personal or financial documents, particularly if family violence is involved.

Time Limits

A married couple can make a property settlement at any time after separation but if an application for property settlement to the Court is to be made that must be filed within 12 months of a Final Divorce Order.

If an Application to the Court for property settlement in a de facto relationship is to be made that must be filed in Court within 2 years after the date the relationship ended.

You may be able to apply for a property settlement out of time, but only in limited circumstances. You will need to seek legal advice about your circumstances.

Get Legal Advice

It is very important to enter into a property agreement with good legal advice. Every case is different. A lawyer can help you understand your legal rights and responsibilities and explain how the law applies to your situation.

Lawyer's fees can be expensive. Whether you are employing a lawyer on a deferred fee basis or paying their fees up front, to get the best value for money you should do as much of the "groundwork" yourself as possible. You can save your lawyer's time (and therefore your money) by being across your financial history. You can do a lot of the fact-finding yourself prior to your appointment, and by being familiar with the family courts' four-step process for a property settlement.

See information sheet; **Property Mediation**