Breaking it down: Divorce vs Property Settlement in Australia

The journey through relationship breakdowns can be a rollercoaster of emotions and legal intricacies. Understanding the difference between a **divorce** and a **property settlement** is key to navigating this stressful time of life.

What is a Divorce?

A divorce is simply the legal termination of the marriage. It does not deal with the division of assets, financial or parenting matters.

In Australia, there is no requirement for one partner to be at fault for the breakdown of the marriage. There is only one ground for divorce – that the marriage has broken down irretrievably beyond repair and that the parties have been separated for at least 12 months. There must be no reasonable likelihood that the parties will get back together.

In order to apply for divorce, you must first satisfy the Court that you have a valid marriage. To do this, the Court must sight your marriage certificate with a sworn translation in English if necessary. If you do not have a copy of your marriage certificate, you may need to contact the Registry of Births, Deaths and Marriages for a copy.

You may apply for a divorce in Australia: –

- if either party regards Australia as their home and intends to live in Australia for the future, or
- if you are an Australian citizen by birth, descent or by grant of Australian citizenship, or
- if you ordinarily live in Australia and have done for one year or more immediately before filing for a divorce.

You must satisfy the Court that you have been separated for at least 12 months and that there is no possibility of the marriage being resumed. You can also apply for a divorce when you have been separated but living under the same roof for this time.

The current cost for filing an Application for Divorce is $1,060. If you receive any Commonwealth Income Support payments, you may also be eligible for a fee reduction.

If you want to remarry, you should wait until you receive the Divorce Order one month and one day after the date of the Court hearing (which is approximately 6-8 weeks after you file your Application for Divorce). You should allow more time before remarrying in the circumstances that the Court may wish to be provided with any additional evidence after the first hearing.

Find out more about separation and divorce here.

What is Property Settlement?

A **property settlement** severs the financial ties between a married couple by distributing the assets and liabilities of the marriage, but it does not alter the status of the marriage.

Property settlement encompasses **all** of the assets (and liabilities) owned by you and your spouse, including your cars, shares, savings and superannuation. You do not have to own a house to do a property settlement. The assets included within property settlement are not just joint assets either, it can include assets that each of you own in your sole names and which you may have owned prior to commencing your relationship.

Many factors are taken into account when dividing the property pool of the marriage. It will not always be an equal division between the two of you. It is therefore imperative that you obtain specialised legal advice with respect to your possible entitlements in a Family Law property settlement.

It is necessary to formalise any property settlement agreement reached by way of Consent Orders in the Federal Circuit and Family Court of Australia, or in some circumstances, a Binding Financial Agreement. Having your agreement documented is important to stop either party coming back for more at a later date.

You do not have to be divorced to sort out your finances. In fact, it is recommended that you commence seeking legal advice in relation to property settlement before you are divorced, due to the time limits imposed on property settlements.

Seeking legal advice shortly after separation can provide clarity and guidance tailored to the specific circumstances of your matter.

Remember, a divorce and a property settlement **are not** the same thing. **They are two separate legal processes** albeit they are both governed by the principles of the Family Law Act 1975 (Cth).

If you are already divorced, and you have not yet distributed your finances, please be aware that there is a time limit of **12 months from the date of divorce** to make an application for property settlement in the Federal Circuit and Family Court of Australia. If your time limit is fast approaching, it is sensible to obtain legal advice as soon as possible.

Find out more about property settlement here.

How Can Andersons' Help?

We have a team of Family Lawyers experienced in all aspects of separation, divorce, property settlements and children's matters. We have 6 locations across South Australia that we practice from. If you would like to have a confidential discussion on your personal situation, please contact our friendly Family Law team on 8238 6666 or alternatively, send through your enquiry at enquiry@andersons.com.au.