



Can my ex claim more assets some years after separation or divorce?

Once a relationship ends, either party may file an Application in the Family Law Courts to seek an Order in relation to how the assets of that relationship should be divided between the parties. According to the *Family Law Act 1975*, this will be the case if the parties were married or if the parties satisfy the criteria of being in a legally recognised de facto relationship.

In most cases the parties to the relationship will take steps to negotiate an agreed division of property between themselves or with the assistance of their solicitors before filing an action in the court. If the matter can be agreed then the parties must formally record that agreement by way of Consent Orders through the court or by entering into a Binding Financial Agreement. Usually the parties will require a solicitor to assist them with this formal recording of the agreed property settlement.

What happens if I do not formally record our property settlement details?

If the parties do not formally record their agreement through Consent Orders or through a Binding Financial Agreement then they are still at risk that their former spouse or partner may make a further claim against their assets or entitlements some years into the future.

There is a time limit set by the *Family Law Act 1975* in relation to parties bringing claims for a division of property following the end of a relationship. In the case of a marriage each party has 12 months from the date of a divorce to file a claim with the court. In the case of a de facto relationship each party has 2 years after the date of the separation to file a claim with the court. As a de facto, it is important that you record the date you separated to enable you to determine this 2 year period.

“Once the time limit for bringing a claim has passed the claim is then said to be out of time... however this does NOT necessarily protect your assets from a future claim by your ex”

Once the time limit for bringing a claim has passed the claim is then said to be “out of time” and technically the party cannot then file a claim.

However this does not necessarily protect your assets from a future claim by your former spouse or partner as there can be exceptions made to allow a claim to be brought out of time. If your former spouse was unable to support themselves without a government pension when the time limit expired, this is a scenario where they can still bring a claim for spousal maintenance.

Or perhaps your former spouse can show that they will suffer hardship if an extension of time is not granted. In that situation they can also bring a claim for property settlement. For example, if they would have had a claim against your superannuation at separation but were not aware of this until after the time limit expired, they might be granted an extension of time by a court.

The court has also recently determined that where a Divorce Order was granted overseas then the time limit set by the *Family Law Act 1975* may not be applied. In these cases, either party may still file a claim some years into the future.

In order to protect your assets from a claim by your former spouse or partner in the future it is best to obtain experienced legal advice about the process of formalising any agreement reached regarding the assets of the relationship after your separation. Our experienced Family Law team is ready and able to provide you with that advice.

If you don't formally record your property settlement agreement through Consent Orders or through a Binding Financial Agreement, your former spouse could make a further claim in future.