



## Do I need a lawyer to do a Consent Order for property settlement or parenting matters?

Consent Orders are Federal Circuit and Family Court Orders made by agreement between the parties and are a legally binding document commonly used in Family Law proceedings for [property settlement](#) and/or [parenting matters](#). If a separated couple can reach an agreement about their property settlement and/or parenting matters, they can have that agreement drawn up into a Consent Order.

Consent Orders can also be used to vary or discharge current Court Orders or to finalise a Court case before trial. By finalising the agreement into a Consent Order, the parties then have the benefit of being a party to a legally binding document, without necessarily having had to issue court proceedings or engage in litigation. An agreement about property settlement is not legally binding unless it is finalised as either a Consent Order or Binding Financial Agreement. If it is not finalised, this leaves it open to either party to change their mind and come back for more, sometimes many years later (subject to applicable time limits).

Consent Orders are a more cost effective and time friendly option than Court proceedings. They provide each party with an opportunity to negotiate an outcome without necessarily having the pressure of having Court proceedings ongoing in the background. Twenty years of experience in family law has shown me time and time again that parties should seek to avoid Court if possible.

In an attempt to save costs, often parties want to know whether they can draw up a legal agreement, such as a Consent Order, themselves.

## Is it necessary for the parties to have legal representatives when dealing with Consent Orders?

While it is not a requirement for the parties to receive independent legal advice prior to signing Consent Orders or even for the Orders to be drafted for a lawyer, it is very risky for the parties not to ensure that they have received independent legal advice and had the Orders drafted by a specialist family lawyer. Consent Orders are legally binding documents which can have profound impact on a person's legal rights and obligations. If the terms of the Orders are not properly understood by a party, the effect can be catastrophic. My question to prospective clients is often "would you take your own appendix out?".

For example:-

### **Property Settlement**

The Husband and Wife agree to draft the Consent Orders themselves and as a part of the agreement their marital home is to be sold with the Wife to receive 60% of the net proceeds of sale and the Husband to receive 40% of the net proceeds of sale. The Wife drafts the agreement and mistakenly writes in the documents that the Husband is to receive 60% of the net proceeds of sale and she is to receive 40% of the net proceeds of sale. There are other errors, in that a second mortgage was on the property that the wife did not know about which was paid out on settlement. The husband also had far more superannuation than the wife knew about, and he kept it all. The mistakes are not picked up by either party prior to signing the documents. The documents are then signed, sent to the Court and sealed. There is no written evidence between the Husband and Wife that they agreed to a 60:40 split of the net proceeds of the sale of the former matrimonial home in the Wife's favour. The Wife now wants to amend the sealed Consent Orders. The Husband refuses and states that the agreement was always that he was to receive 60% of the net proceeds of sale. The Wife is now in a predicament where there is a significant mistake in the Consent Orders, yet there is very little evidence to prove that a mistake was actually made. It will require a complex and costly application to the Court by the wife to try and set aside or vary these Orders.

### **Parenting Matters**

The Mother and the Father agree to draft the Consent Orders themselves with respect to the care arrangements for their child, with the parties to have week about shared care. The agreement does not include any provisions for Mother's Day, Father's Day and special occasions such as Christmas and Birthdays. After the Consent Orders are sealed by the Court, the Mother seeks to have the care of

the child on Mother's Day when the child would otherwise be in the care of the Father. As there are no provisions relating to Mother's Day in the Consent Orders, the father refuses to give the mother care. The mother now realises that she is subject to Consent Orders which do not cover imperative issues such as special occasions. Further complications arise when the Mother wants to take the children to visit her family in the UK, as there are no provisions for extended time or travel overseas. The Father does not agree and the Mother is forced to file a complex and costly application to the Court by the wife to try and set aside or vary these Orders.

When considering entering into a Consent Order, it is paramount that each party understands the effect of the document from a legal perspective. It is clear that the parties would be taking a significant risk in not engaging respective legal representatives as a lawyer can interpret the meaning of the agreement and advise on the consequences from a legal perspective. In some cases, Consent Orders can be overturned by the Court, however this process is time consuming, costly and highly stressful. It is therefore sensible to seek the advice of a legal representative prior to signing a Consent Order.

Many of my clients will come to me for advice and are then able to reach an agreement directly with their former partner. Once they reach agreement however, they will come back to me so that I can legally document it for them such as with a Consent Order.