



# How Long Do I Have to Apply for Property Settlement After Separation?

In South Australia, the time you have to apply for property settlement depends on your relationship type. If you were married, you have 12 months from the date your divorce is granted to apply to the Court for property orders under the *Family Law Act 1975 (Cth)*. If you were in a de facto relationship, you have 2 years from the date of separation. These time limits apply to making a court application, not to reaching an agreement with your former partner. You can (and should) start negotiating property settlement as soon as you separate. Acting early protects your interests and gives you the best chance of a fair result.

## What are the time limits for property settlement?

The time limits depend on whether you were married or in a de facto relationship. A de facto relationship is generally defined as a legally recognised partnership where two people (same or opposite sex) live together on a genuine domestic basis but are not married or family (Section 4AA of

the *Family Law Act 1975*).

You have 12 months from the date your divorce order takes effect to file a property settlement application with the Court (section 44(3), *Family Law Act 1975*). Importantly, this time limit only starts running once a divorce is granted. If you separate but do not divorce, the 12-month clock does not begin.

Whereas in a de facto relationship you have 2 years from the date of your separation to apply for a property settlement order (section 44(5), *Family Law Act 1975*).

## What happens if I miss the time limit?

Missing the deadline does not automatically mean you lose your right to a property claim, but you will need the Court's permission to proceed. Under sections 44(4) and 44(6) of the *Family Law Act 1975*, you can apply for leave (permission) to file out of time.

To be granted leave, you will need to show the Court that you would suffer hardship if the application were not allowed. The Court will also consider whether the delay was caused by factors such as:

- Family violence or coercive control
- Significant contributions made after separation (e.g. mortgage payments, renovations)
- The other party's failure to disclose assets
- Both parties consenting to the late application

There is no guarantee the Court will grant leave. Getting legal advice early is the best way to protect your position.

## Step-by-step guide to property settlement after separation

1. **Determine your relationship type.** Were you married or in a de facto relationship? This determines whether you have 12 months (from divorce) or 2 years (from separation) to apply to the Court.
2. **Get legal advice early.** Speak to a family lawyer as soon as possible after separation. A lawyer can help you understand your entitlements and obligations.
3. **Gather financial information.** Collect documents relating to all assets, liabilities, superannuation, and income for both parties. Full financial disclosure is a legal requirement. This helps to determine what the asset pool is, the financial contributions and circumstances of each party and how this can be divided.
4. **Attempt to negotiate.** Try to reach an agreement with the other party. This can be done directly with your former spouse, through lawyers, or with the help of a mediator. If the other party refuses to engage, your lawyer can advise on next steps, including making a court

application.

5. **Formalise the agreement.** If you reach an agreement, have it documented as consent orders (approved by the Court) or a Binding Financial Agreement (drafted by lawyers). Do not rely on a handshake or informal arrangement.
6. **If you cannot agree, apply to the Court.** If negotiations break down, you may need to file an application for property orders. If you are outside the time limit, you will first need to apply for leave to proceed out of time.

## Common risks and mistakes

### 1. Assuming you must be divorced before settling property

Many people assume they need to be divorced before they can deal with property. This is incorrect. You can apply for property settlement at any time after separation, even while still legally married. Waiting for a divorce simply delays the process and may put you at a disadvantage.

### 2. Waiting for the 12-month separation period to pass before starting negotiations

The 12-month separation period is a requirement for applying for divorce, not for starting property settlement discussions. You can, and should, begin negotiating property division as soon as you separate.

### 3. Believing you have unlimited time if you do not divorce

While it is true that the 12-month time limit only starts once a divorce is granted, delaying indefinitely creates serious risks. Evidence may become harder to obtain, contributions harder to prove, and the asset pool may change significantly. A former spouse could also make a claim years later if nothing has been formalised.

### 4. Relying on informal agreements

Agreeing to a property split verbally or in writing, without formalising it through consent orders or a Binding Financial Agreement, leaves both parties vulnerable. Without legal finalisation, either party can return to the Court and seek a different outcome.

### 5. Not understanding that the Court assesses the current asset pool

The Court looks at the value of assets at the time of the hearing, not at the time of separation. If you delay for years and your assets have increased in value, the pool being divided will be larger. This can work against the party whose assets have grown. In South Australia, this is one of the most common mistakes Andersons Solicitors sees in practice.

## Frequently asked questions

### How long does the property settlement process take?

You'll often hear lawyers respond to this question with "well how long is a piece of string". The answer is "it depends". The length of the process depends on how complex the asset pool is, whether both parties can reach agreement, how engaged each party is and everything in between. A straightforward matter where both parties agree may be finalised in a few months, however some matters may take 12 months or longer. Starting the process early and getting legal advice from the outset helps to keep things on track.

### Do I have to go to Court?

Not necessarily. Many property settlements are resolved through negotiations and mediation, without ever going to Court. If the parties reach agreement, it can be formalised as consent orders (which still require Court approval) or through a Binding Financial Agreement. Court proceedings are typically a last resort when agreement cannot be reached.

### What do I do if the other party will not engage in property settlement discussions?

If the other party refuses to communicate or negotiate, you still have options. A family lawyer can send formal correspondence to the other party, attempt to arrange mediation, or advise you on making a direct court application. In South Australia, the Court requires parties to make a genuine effort to resolve disputes before filing, but there are pathways available when one party is uncooperative.

### Do I need a lawyer to help with property settlement?

While it is technically possible to manage property settlement without a lawyer, it is not recommended. Family law is complex, and the financial consequences of getting it wrong can be significant. A family lawyer can help you understand your entitlements, negotiate on your behalf, and ensure your agreement is properly formalised. Andersons Solicitors offers initial consultations to help

you understand your position.

If you have separated and need advice on property settlement, do not wait. The sooner you act, the better your position will be. Contact Andersons Solicitors to speak with an experienced family lawyer who can guide you through the process and help protect your interests.

**Disclaimer:** *This article provides general information only and does not constitute personal legal advice. The law may have changed since this article was published. You should seek independent legal advice relevant to your specific circumstances before acting on any information contained in this article.*

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