



Protecting Yourself, Your Property and Your Finances After Separation

Separating from your spouse or partner often triggers feelings of loss, grief and uncertainty. Amidst the turmoil, it is crucial that you take steps to protect yourself, your property and your finances after separation. Whilst the process of disentangling your finances can be challenging, failing to do so can lead to ongoing stress and long-lasting financial consequences.

There are several options available to parties seeking to sever financial ties. Understanding these options can help you regain control over your financial future and limit your exposure to ongoing financial stress.

Consent Orders

Where parties agree on the division of their property and finances, they may wish to apply for Consent Orders. Consent Orders are legally binding court orders and can cover a range of Family Law matters including:

1. The division of property, such as real estate, cars and other assets and liabilities;
2. Superannuation splitting;
3. Financial support, including spousal and/or de facto maintenance; and
4. Parenting arrangements and child maintenance.

In Australia, all applications for Consent Orders are filed in the [Federal Circuit and Family Court of Australia](#). Once filed, a Judicial Registrar will be appointed to review the application, and provided that the court is satisfied that the financial orders sought are just and equitable, Consent Orders will be made.

Whilst there is no legal requirement that either party obtain legal advice before applying for Consent Orders, it is strongly recommended that parties consult with an experienced Family Law solicitor before signing an Application for Consent Orders. It is also important that parties consult with a lawyer to ensure that the paperwork has been prepared properly, and that all requirements have been met.

Financial Agreements

Parties wishing to resolve property matters and secure their financial future may instead prefer to enter into a Financial Agreement.

A Financial Agreement is a contract between two or more people made pursuant to the Family Law Act 1975 (Cth). Financial Agreements are appropriate where parties wish to supersede the court's jurisdiction in relation to financial matters and 'opt out' of the court process. The agreed outcome does not need to be 'just and equitable' – meaning that one party may contract to receive less than they would otherwise be entitled to.

Whilst Financial Agreements do not need to be considered by the court; to be legally binding, they must comply with strict legislative requirements. And, prior to entering into a Financial Agreement, each party must obtain independent legal advice about the effect of the Financial Agreement on their rights, and the advantages and disadvantages of entering into the Agreement. Because of this, Financial Agreements are generally more costly to prepare and often take longer to finalise than Consent Orders.

Informal Agreements

Informal agreements, such as verbal promises, written agreements or email correspondence, may seem like a convenient way to resolve financial matters but they can lead to devastating financial and emotional consequences. Informal agreements are not legally binding or enforceable.

Without a legally binding agreement, there is a very real risk that you could become embroiled in costly disputes and legal battles down the line. In some instances, this could result in you paying a greater settlement sum to your former partner or spouse than what was informally agreed. There is also a very real possibility that your former partner or spouse could make a subsequent claim against

your assets – including those acquired post-separation. You could also become liable for your former partner or spouse's debts.

By relying on informal agreements, separating couples risk jeopardizing their financial security and property rights.

Court proceedings

Where parties cannot reach an agreement about their finances, court proceedings may become necessary and appropriate. This can be a lengthy and costly process, taking a significant emotional toll on both parties and, potentially, any children.

If parties are unable to reach an agreement during the court process, a trial may be required to determine the dispute on a final basis. There is, therefore, a possibility that the outcome may not align with your individual wishes or interests. The uncertainty and unpredictability of the court process can be stressful and emotionally draining, highlighting the importance of alternative dispute resolution, wherever possible.

How can Andersons Solicitors help?

Andersons Solicitors is here to provide advice and guidance about your legal entitlements following a relationship breakdown. [Our team of family lawyers](#) can provide assistance in determining which of the above options is best suited in your situation. Contact us on 8238 6666 or email enquiry@andersons.com.au