Understanding Property Transfers in Family Law: Why Consent Orders Matter

There is a common misconception when people separate that transferring property between ex-spouses can be achieved simply through transferring property with a conveyancer.

While this may seem like the easiest pathway, especially if you can secure finance approval, without formal Court Orders (or Binding Financial Agreement) you are at risk of future claims over your property.

What are Consent Orders?

Consent orders are Federal Circuit and Family Court of Australia orders that formalise your agreement on issues including property division, parenting arrangements and/or financial support. When you reach an agreement with your ex-partner, you can file an Application for Consent Orders in court to obtain a Consent Order. These orders are reviewed and then approved by the Federal Circuit and Family Court of Australia, making the agreement legally binding.

Your solicitor can prepare these documents for you and no attendance in Court is required.

What is a Binding Financial Agreement?

A Binding Financial Agreement is an agreement under the *Family Law Act 1975*, that sets out the terms of your property division, and/or financial support. The agreement is not filed in court nor reviewed by the Court.

Instead, parties are each required to receive legal advice from an independent legal practitioner prior to entering into the Agreement.

Once again, your solicitor can prepare the agreement for you and no attendance in Court is required.

The Risk of not having Consent Orders

Most lenders (banks) will require a Consent Order (or Binding Financial Agreement) before they finalise your finance approval. So it is an important step in the process for this to occur. Once the Consent Order is made by the Court your lender will finalise your finance approval and you can proceed to transferring the property and loan.

We have seen documents prepared by individuals who are not legal practitioners, claiming to record the terms of the property transfer. It is important to note that unless it is either a Consent Order or Binding Financial Agreement it does not finalise the property settlement claim and you should not rely on it.

If the property transfer is not formalised through consent orders (or Binding Financial Agreement), then your former spouse may still be legally entitled to make a claim for property settlement against you. In some cases, this may remain a risk for many years to come.

By obtaining consent orders you can ensure that your property settlement is legally binding, providing certainty for both parties and reducing the risk of a dispute arising in the future.

How Can Andersons Help?

In property settlements, if you do not formalise an agreement through Consent Orders or a Binding Financial Agreement, this can leave you exposed to potential claims in the future.

Here at Andersons, our experienced family law team can provide you with advice on your agreement and walk you through the process of obtaining Consent Orders. Please contact our office to discuss how we can assist you with finalising your family law matter.