



## Family Law property settlement not done in time?

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### Are there extension of time options?

Generally, under the *Family Law Act 1975* if you are married, you have 12 months from the date of your divorce order to finalise your [property settlement](#) and/or spousal maintenance. This can be done with a binding financial agreement or consent order in the Family Court or by instituting proceedings in court. If you have been in a de facto relationship the time limit is 2 years from the end of your relationship.

The application to commence court proceedings is normally made to the Federal Circuit Court and is accompanied by an affidavit and financial statement setting out the facts the application relies on.

### Are there time restrictions on finalising property settlement and spousal maintenance?

Although you should aim to either finalise your [Family Law](#) matter by agreement or institute proceedings within the stipulated time frame, there are circumstances in which the court will allow an application to be made after the time period has expired. The court will consider the hardship to both the applicant and respondent if the extension is not granted and the reason for and length of the delay.

The first hurdle to overcome is the requirement that the applicant or a child of the relationship would experience hardship if an extension of time were not granted. Hardship does not require that the applicant be in a situation of need. Nor does it require the applicant to be claiming an amount of great value. However, they should be able to show that their claim is reasonable and not based on improbable evidence.

If the application relates to spousal maintenance, the applicant must show that at the end of the time period they were unable to support themselves without an income tested pension, allowance or benefit.

The reason for delay is something the court will look at by giving consideration to the facts and circumstances of each application. The application is less likely to be granted if the reason for delay over a long period of time is not adequate. However even if there has been a long period of time since the time period expired, it may still be possible to seek an extension of time if there is a good reason for the delay. A good reason could include, but is not limited to, a significant illness by one of the parties.

The reason and length of the delay is also relevant when the court balances the applicant's position with any prejudice to the respondent if the application is allowed. Again, this will depend upon the individual facts and circumstances of your application as to whether the court deems the application reasonable.

It is important to seek experienced Family Law legal advice to assist in assessing your claim and ensuring the court is aware of all relevant facts to establish that an extension should be granted.

Today's primary writer is Partner in Family Law, [Ryan Thomas](#) and he was assisted by law student Mia Tam.

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