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Can I change my Family Law final property consent orders?

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There are limited circumstances in which a court will allow changes to be made to final property consent orders. Final property consent orders are any orders that have been made by the [Family Court or Federal Circuit Court](#) in relation to your financial matters with the agreement of both parties. When final orders are made by a court, the court deems that such orders should be **final** and bring an end to any litigation.

However, there are certain circumstances under the *Family Law Act 1975* (Cth) where you can request that final property orders are varied or set aside. A court may vary or set aside a final property order if the court is satisfied of one of the following:

1. That there has been a “miscarriage of justice” by reason of fraud, duress, suppression of evidence, the giving of false evidence or any other circumstance;
2. In the circumstances that have arisen since the making of the final orders, it is impracticable for the order (or part of the order) to be carried out;
3. A person has defaulted in carrying out an obligation imposed on them by the final order;
4. Circumstances of an exceptional nature relating to the care, welfare and development of a child of the marriage have arisen since the making of the final order;
5. A proceeds of crime order has been made covering property of the parties to the marriage; or
6. There are circumstances where all parties to the proceedings in which the order was made, consent to the order being set aside or varied.

The most common ground used is the first ground, which is that there has been a miscarriage of justice.

What does “miscarriage of justice” actually mean?

There are four steps which need to be established in order for a court to vary or set aside final orders due to a miscarriage of justice. These four steps are:

Step 1 - Has a ground been established?

You will need to establish that there has been fraud, duress, suppression of evidence, the giving of false evidence or another circumstance by which the orders should be set aside.

Fraud means that there was a conscious wrongdoing or some form of deceit by one party.

Duress occurs in circumstances when one party is under a high level of pressure to sign the orders, to the extent that the pressure goes beyond what the law is prepared to note as legitimate.

Suppression of evidence will be established if there has been a failure by one party to disclose relevant information to the making of the orders

Step 2 - Does that ground amount to a miscarriage of justice?

Miscarriage of justice means that the order has been unjustly obtained. It will extend to any situation which indicates that the final property order was not obtained fairly.

For example, if one party fails to disclose a financial asset, this could be deemed by the court to amount to a miscarriage of justice because the order was made based upon the information presented by the parties at the time the order was made. The court will therefore be required to determine whether the ground that has been established, in this case the suppression of evidence, has led to the orders being obtained unfairly.

Step 3 - Should the court, in its discretion, vary or set aside the order?

If a miscarriage of justice has been established, a court will then consider if it should exercise its discretion and vary or set aside the orders.

Step 4 - Should the court make another order?

The final determination for the court is to consider whether it should make another order. The court will look at a number of factors before making this determination. This could include whether or not

the final orders set out a division of property that is within fair and equitable to both parties having taken all factors into consideration.

Setting aside final orders can be complicated. We recommend that you speak to a [Family Law specialist](#) to obtain legal advice.

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- [Can I change my Family Court orders?](#)
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