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LawTalk Blog



Can I receive part of my property settlement before final orders are made?

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Scenario

Matthew and Rachel have recently separated after a marriage of 12 years. Matthew works full time and earns approximately \$120,000 a year. Rachel works part-time and earns approximately \$40,000. The assets of the parties are:

- House with an estimated value of \$850,000
- Joint bank account holding \$150,000
- Bank account in Matthew's name holding \$30,000
- Bank account in Rachel's name holding \$9,000
- Motor vehicle (in Matthew's sole name)
- Motor vehicle (in Rachel's sole name)
- Household contents

Since separation neither party has had access to the funds held in their joint bank account. This account has been 'frozen' to preserve the assets. Both Matthew and Rachel have been living off their respective incomes. Rachel requires the sum of \$50,000

for a new house and to continue to fund her legal fees.

Question

Can Rachel receive a payout of \$50,000 from the parties' joint bank account prior to the parties reaching agreement about the division of property on a final basis?

Answer

The request that Rachel is making could be considered a request for what is known as a "partial (or interim) property settlement". That is, Rachel is requesting \$50,000 out of the asset pool as part of her property settlement to be paid to her prior to the parties reaching a full agreement about the final property division.

There are a number of reasons as to why a party to Family Law proceedings might request a partial property settlement. These reasons can include if one party requires immediate funds for a particular purpose such as purchasing a new home, or medical costs or if one party requires the funds to pay their legal fees.

The Court is generally reluctant to make orders for partial property settlement. This is because the evidence before the court is untested. There are however limited circumstances under the *Family Law Act* in which the court is able to make orders for partial property settlement. The criteria that need to be met are:

1. There is a source of funds for payment;
2. One party has the majority of control over the assets;
3. The payment can be made without risking that party receiving more property than they will ultimately receive on a final basis;
4. There is an adequate explanation for what the funds are required for; and
5. It can be established that it is just and equitable to make a partial property settlement order

It is clear from the factual scenario above that Matthew is in a position of financial strength compared to Rachel. This is due to his superior income and the funds currently available to him.

It is likely that Matthew has a capacity to meet his own legal costs, whereas Rachel is struggling to meet her own legal costs.

The court will be required to consider whether in the circumstances of the case, a payment of \$50,000 to Rachel creates a risk of Rachel receiving more property than she would ultimately receive on a final basis. The court will make this determination on the basis of the evidence that is before it with respect to the value of the asset pool, the initial contributions of the parties and the contributions of the parties throughout the marriage.

The court will also need to consider whether it is "just and equitable" to make the partial property settlement. That is whether it would be fair, for both parties, to make the partial property settlement order.

If you would like to seek a partial property settlement order, we recommend that you speak to a [Family Law](#) specialist.

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