



# Family law property settlements and COVID-19

**Author:** [Troy Roulstone](#)

**Email:** [enquiry@andersons.com.au](mailto:enquiry@andersons.com.au)

**Phone:** 08 8238 6666

**Date:** Monday May 18, 2020

The COVID-19 pandemic has had a drastic impact on the everyday lives of people all over the world. The [Federal Circuit Court](#) and [Family Court of Australia](#) have recently established special court lists to deal with issues arising from the impact of COVID-19 to cope with significant increases in matters filed with Courts.

The financial impact on Australia's economy, as a result of business closures, is forecast to hit \$50 billion. In the sphere of Family Law, the financial impact must be recognised as a factor for all [property settlements](#) and parties should [seek proper advice](#) before finalising any settlements formally.

## What are factors parties should consider before finalising property settlements during COVID-19?

### 1. Business valuations – consider putting them on hold:

The impact of COVID-19 in a financial sense may not be fully realised for some time. You should carefully consider whether business valuations at the current time are necessary or appropriate. Many businesses will have seen a considerable downturn in income, as well as increased expenses such as payouts of annual leave and the like. Utilising the last financial year's figures may considerably inflate the business value by comparison to the current financial year's figures. Many of these businesses can expect to recover from the financial impact of the virus; however, it is unknown at this stage when things might return to normal and what the long-term effects on the value of the business might be.

### 1. Superannuation splitting orders – percentage orders as opposed to cash payments:

[Superannuation splitting orders](#) are expressed either in percentage or dollar terms to effect splits of superannuation interests. Financial uncertainty at the current time or in the future may have a negative impact on investments and as a result many people will see a fall in their superannuation balances, depending on how it is invested. Therefore, expressing splitting orders in dollar terms may be unfavourable and have unexpected impacts to the remaining value of the fund. Expressing splitting orders in percentage terms will share the impact of any adverse changes and therefore are preferable in uncertain economic times.

## 1. Finalised Property settlements – are previous agreements impossible:

It may be the case that parties have previously finalised property settlements by way of [Court Orders](#) or [Binding Financial Agreements](#). An unfortunate outcome of the present pandemic may be that previously agreed terms of settlement which are yet to be actioned may no longer be possible due to no fault of either party. For example, a party who has been stood down from their employment may no longer be in a position to refinance a home loan as they had agreed to do. Parties may wish to obtain advice if they are in a position where settlements are no longer possible as a result of the pandemic (e.g. it having changed their personal circumstances).

## 1. Spousal maintenance – are the terms of previous orders now unfair or unworkable:

Orders may have previously been made, or an agreement reached, for a party to pay spousal maintenance to the other party. If the COVID-19 pandemic has caused a reduction in income for the paying party, there may be grounds to seek a reduction in the payments required to be made. You should obtain advice regarding your situation.

## 1. Child support – consider a reassessment:

Parties who have lost their jobs or receive a reduced income should consider whether updated assessments should be undertaken for child support liabilities. As the formula for [child support payments](#) is based on the parties' income, a decrease in income of the payer will result in a decrease in overall liabilities payable, unless a previous binding agreement stipulates otherwise. You should obtain advice regarding your situation.

## 1. Critical Illness – consider an urgent application & get your estate planning in order:

In the unfortunate event that a party falls ill with the COVID-19 virus, their condition may become critical, especially if they are particular at risk due to being elderly or suffering from an immune deficiency. If there are serious concerns about a party's health who has separated from a spouse, it may be prudent to make an urgent application to the Court for property settlement. In that case, the party's right to property settlement will be preserved in the event that they should pass away, and the Court may see fit to hear the matter urgently in light of the circumstances. Failure to have proceedings on foot at the time of someone's passing means that the person's Will would determine the distribution of their wealth. Parties should [obtain advice](#) about this urgently if they suffer ill health, related to COVID-19 or not.

# Estate Planning and Separation during Coronavirus

It is always recommended that you ensure that your estate planning is up to date following a separation, especially if you have concerns about your health. Separation does not affect the validity of your Will (and any clause benefiting your former partner), the appointment of your former partner under an [Enduring Power of Attorney or Advanced Care Directive](#), or binding or non-binding

nominations in respect of your Superannuation. We therefore recommend that you ensure that all of these documents are updated as soon as possible after separation.

This blog post was written by [Troy Roulstone](#) and [Keryn Hickmann](#).

---

*Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to South Australian legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.*