

Property Settlement – Your Rights on Separation

- When you and your partner separate, either of you may make an Application to the Family Court to seek Orders by way of property settlement.
- There is no requirement on you or your partner to make any Application to the Family Court or to have any Orders made for property settlement.
- Once you have separated however, and your marriage or relationship has broken down irretrievably, it is extremely important for you and your partner to resolve issues concerning ownership of property.
- It is recommended that you resolve your property settlement sooner rather than later after separation. This is because the Court has the ability to take into account assets at the current date rather than simply the assets that existed at separation. It is recommended that property settlement be resolved as soon as possible after separation.
- If you are married and separated then you only have twelve (12) months from when your Divorce is final to resolve property settlement, either by consent or commencing Court proceedings. After 12 months from Divorce you must seek leave of the Court to institute proceedings and this will only be granted if certain criteria are met.
- If you were in a de facto relationship you only have 2 years from the date of your separation to resolve your property settlement or commence Court proceedings.
- Whether married or de facto you should resolve your property settlement in an enforceable way. That is, by a Consent Order filed in the Family Court, Binding Financial Agreement, or an Order of the Court if Court Proceedings have commenced.
- It is important that upon separation and the breakdown of your marriage that you immediately examine the terms of your Will and have a new Will prepared to reflect your change in circumstances.
- Upon separation, it is also important to examine any Superannuation policies that you have and in particular as to whom the named beneficiary is in those policies and whether you wish to change the beneficiary (as in many cases this will be your spouse/partner).
- If you own property jointly with your partner (in Queensland) then we advise you to immediately sever the joint tenancy so that the property is held with your partner as Tenants-in-Common rather than Joint Tenants until a final property settlement can be agreed upon. The reason for this is that if you die, then any property you own as Joint Tenants will pass to your spouse and not through your estate (in accordance to your Will).

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