

Can I claim more assets years after separation or divorce?

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After separation, figuring out how to divide your assets can be stressful. Property settlement (the division of assets and debts acquired during the relationship) in family law is often formalised through Consent Orders made by a court or by entering into a Binding Financial Agreement. However, what happens if you separate and want to claim more assets years after your separation and finalisation of your property settlement?

This blog explores the purpose and implications of formally recording your property settlement and the risks that may arise if you do not finalise all financial ties with your ex-partner.

Binding Financial Agreements (BFAs)

Separated couples are encouraged to agree on financial and property arrangements (referred to as property settlement), without initiating proceedings in the Family Law Courts.

In many cases, parties will negotiate an agreed settlement between themselves, or with the assistance of a lawyer, and formally record this by entering into a Binding Financial Agreement ('BFA'), typically drafted by a lawyer.

BFA's are intended to bind all parties to the agreement and are essentially contracts. As such, if you have a BFA, a court will not generally intervene or set it aside unless there are compelling reasons to do so.

The circumstances that can trigger the court's intervention and to consider setting aside a BFA include:

1. misrepresentation or fraud;
2. change of circumstances in relation to children;
3. fraud against third parties (eg, a party enters into a BFA to defeat a claim being made by a third party against their assets, such as a former spouse or a creditor)
4. uncertainty and incompleteness;
5. impracticability; and
6. unconscionable conduct, duress and undue influence.

If a BFA is set aside by the court due to any of the above circumstances, then the BFA will no longer be legally enforceable. You are then able to initiate new proceedings with the Family Court, which may mean you can claim more assets after separation.

Consent Orders

Consent Orders are written agreements that are approved by the courts and have the same effect as a court order.

If you have Consent Orders made by the Family Law Courts concerning your financial and property matters, it is unlikely that the court will grant leave to claim more assets years after your separation.

The Family Court will only entertain an application to set aside Consent Orders in limited circumstances. These include:

- where there has been a miscarriage of justice by serious allegations of fraud or duress; or
- if you can prove that your ex-partner did not honestly disclose their true financial position.

If the court does set aside the Consent Orders, you may be able to claim more assets years after separation.

I do not have a BFA or Consent Orders

If you have not formally recorded a property settlement agreement through a BFA or Consent Orders, then you may be able to make a claim against your former partner's assets some years after separation. Conversely, there is a risk that your ex-partner could make a claim against your assets too.

Time limits for property settlement

The *Family Law Act 1975* sets out strict time limits in relation to parties bringing applications to finalise property and financial matters.

For married couples, each party has 12 months from the date of divorce to file an application with the court. For de facto relationships, each party has two years after the separation to file.

You can learn more detail about time limits in family law matters in our blog, “Time limits for property settlement and spousal maintenance”.

Are my assets protected if the time limits have passed?

Once the above time limits have been reached, technically a party cannot then file a claim with the court. However, exceptions can be made to allow a claim when the time limit has expired.

This means that once the time limit has been reached, your assets are not necessarily protected from a future claim by your ex-partner. Situations, where you might be able to bring a claim for property settlement after the time limit, might arise are where you can show that you will suffer hardship if an extension of time is not granted.

How a family lawyer can help

If you are separated, it is imperative that you formalise your property settlement as soon as possible in order to avoid either party making claims for more assets years after your separation.

To best protect your assets from a claim by your ex-partner later down the track, we recommend seeking legal advice about the process of formalising any property settlement agreement after separation. Alternatively, if you are a party that has entered into a BFA and are of the view that there may be grounds to set aside the agreement, it is imperative to seek legal advice as soon as possible.

The team at Smith Family Law can provide you with that advice.

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