

Overseas assets in family law property settlement

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In today's globalised world, it is becoming increasingly common for individuals to own property overseas, such as real estate, funds in international bank accounts or international shareholdings. So, what happens to overseas assets after separation or divorce?

Dealing with overseas assets in a property settlement can be complex as there are a number of factors to consider, including:

- which country is best to pursue your property settlement;
- how overseas property is treated in Australia during family law proceedings; and
- the enforceability of Australian Court Orders overseas.

Should a property settlement be pursued in Australia and/or overseas?

If you hold assets in Australia and overseas, it is best to obtain family law advice both in Australia and in the country where your overseas assets are located. Depending on the extent of the assets held overseas, and where you and your former partner reside, it may be appropriate for your property settlement to be determined in the foreign country.

There may be advantages or disadvantages to your property settlement being heard in a jurisdiction outside Australia, and it is possible that one jurisdiction may lead to a more favourable outcome in your matter. Every country (and in some cases, state or province within the country) has different laws, so it is important to be well-informed prior to making any decisions.

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How are overseas assets treated in property settlements in Australia?

In short, overseas assets are usually included in the property pool available for division between you and former partner and are taken into account as part of a property settlement.

The need to disclose overseas property

When dividing property after separation, one of the initial steps is to identify and value all the property of you and your former partner. This includes assets, liabilities and superannuation in which you and/or your former partner have an interest jointly, individually or, in some cases, via corporate entities or trusts. These include interests that exist in Australia and/or overseas.

During the process of a property settlement, there are disclosure obligations on you and your former partner to provide each other all relevant information and documents regarding your financial circumstances. This includes disclosing all property held in Australia and outside of Australia. It is important to disclose all overseas property as a failure to do this may have serious consequences, including fines or, in some cases, imprisonment.

Valuing overseas property to be included in property settlement

Like property held in Australia, foreign property will need to be valued during the process of your property settlement. You and your former partner can agree on the value, or if you are unable to reach an agreement, it may be necessary to obtain a valuation from an independent expert.

Overseas superannuation interests

Superannuation interests held overseas are treated differently to Australian superannuation interests and may need to be dealt with in the relevant country. They are generally not considered superannuation for the purposes of a family law property settlement.

In addition, Australian superannuation interests can be divided or ‘split’ during the process of a property settlement by applying to an Australian Court for Orders. An Order made by an overseas court is ineffective to split Australian superannuation interests. However, unlike Australian superannuation interests, an overseas superannuation interest may not be splittable or transferrable.

It is, therefore, important to obtain advice about how your overseas superannuation interests are likely to be treated and dealt with in your property settlement.

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Are Australian Court Orders enforceable overseas?

When finalising your property settlement, whether by agreement or determination by the Court, it is essential to consider what Court Orders you are seeking and whether they can be enforced in all/any of the countries where assets are held.

Australian Courts can make orders about overseas assets or take them into account as part of your property settlement. Australian Court Orders are not automatically enforceable in a foreign jurisdiction. This means that some countries may not recognise and implement an order of an Australian Court.

It is prudent to seek legal advice from a solicitor of the foreign country to ascertain whether Australian Court Orders can be enforced in that country. This will assist in avoiding a situation where your property settlement cannot be properly carried out as you and your former partner intended.

Where the owner of the overseas property is in Australia, the enforceability of Australian Court Orders will be less of an issue. In these cases, it can be appropriate to seek orders requiring a party to transfer or sell the overseas property. It is crucial to obtain advice both in Australia and overseas regarding any tax implications associated with selling foreign property or transferring the property between you and your former partner.

How a family lawyer can help

When it comes to negotiating property settlement after separation, complex issues can often arise where you or your former partner own foreign assets. Obtaining legal advice early from a family lawyer will equip you with the knowledge you need to make informed decisions about your next steps and how to protect your interests. Contact us to speak with one of our experienced family lawyers about your circumstances and to determine the best way forward.

Contacting Smith Family Law

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