

Time limits for property settlement and spousal maintenance

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In family law matters, strict time limits apply to commence property settlement and spousal maintenance negotiations. The time limits differ depending on whether you were married or in a de facto relationship. Allowing the time limit to expire could mean that, in the event you cannot agree with your former partner, you can no longer apply to the Court to make the final decision.

Time limits for married couples

Married couples only have 12 months from the date of divorce, to start proceedings for a property settlement and/or spousal maintenance.

Married couples who are separated but not yet divorced, do not need to be concerned with this time limit, as they can apply for a property settlement or spousal maintenance immediately upon separation. The time limit does not kick in until the granting of a Divorce Order.

Depending on your circumstances, it may be beneficial to apply for a divorce as soon as possible after separation; noting however that you must be separated a minimum of one year and one day prior to applying for divorce. If you apply for divorce sooner (rather than waiting, for example, several years), this will shorten the time frame in which your former spouse can apply for property settlement or spousal maintenance.

Alternatively, it may be beneficial in your specific circumstances to hold off getting divorced so that you have more time to negotiate and reach a property settlement with your former spouse without the added stress of a ticking clock.

Each individual has different circumstances and it is advisable to seek legal advice early, to protect your financial future.

Time limits for de facto couples

De facto couples have 2 years from the date of separation to start proceedings for a property settlement and/or spousal maintenance. There is no legal process for de facto couples to go through when they separate, and so the exact date of separation can be unclear.

This time limit is one of the major reasons why the date of separation is so important in family law matters. Often, parties can disagree as to the actual date of separation, and therefore disagree on when the time limit is up to make a claim.

Some things that the Court will consider when determining the date of separation can include:

- The sleeping arrangements before and after the date of separation;
- Whether there is an existence of a sexual relationship;
- Who is doing the household chores (e.g, are the parties still caring for one another);
- Whether the parties are continuing to share meals together;
- How the parties represent themselves to others (have they told their friends/family/Government agencies about the separation); and
- Whether the parties have been on holidays together since the alleged date of separation.

While none of these factors can conclusively determine the date of separation, the Court will take them into account when making a decision. Due to the strict time limits and possible disagreement as to the date of separation, we recommend recording the date you consider yourself separated from your former partner.

What happens if the time limit passes?

If the time limit has passed, an application for property settlement or spousal maintenance can only be made with consent of the parties or with leave (permission) from the Court.

The Court may grant a party leave to apply after the end of the normal application period if the Court is satisfied that:

1. hardship would be caused to the party or a child if leave were not granted; or
2. in the case of an application for spousal maintenance, at the end of the normal application period, the party's circumstances were such that he or she would have been unable to support him or herself without an income-tested pension, allowance or benefit.

Leave cannot be guaranteed.

It is important that parties do not let the time limit pass even if they have reached an informal agreement before that time – it must be formalised. Formalising your agreement with your former partner eliminates the risk of one of the parties bringing a future application for leave at a later date, and provides you with the finality and reassurance that your financial relationship has been properly and legally severed.

How do we formalise our property settlement agreement?

You can formalise your property settlement agreement either by entering into Consent Orders or a Financial Agreement.

A Consent Order is a written agreement that is approved by a Registrar of the court, provided it is considered to be a fair and reasonable agreement. A Financial Agreement is made outside of the Court and is usually made to prevent the Federal Circuit and Family Court of Australia from interfering with the agreement.

If you and your former partner cannot agree about property settlement, it may be necessary to make an application to the Court for final property Orders.

How do we formalise our spousal maintenance agreement?

You can formalise your spousal maintenance agreement the same way you would formalise your property settlement, either by entering into Consent Orders or a Financial Agreement. Both your property settlement agreement and your spousal maintenance agreement can be formalised at the same time.

If you and your former partner cannot agree about spousal maintenance, it may be necessary to make an application to the Court for Orders for maintenance.

How a family lawyer can help

Smith Family Law can assist you in formalising a property settlement or making a claim for spousal maintenance before the time limit is up, and advise you of your options if the time limit has expired.

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