

# We have agreed on a property settlement, do I need a Solicitor?

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1 November 2018



When a marriage or a de facto relationship ends, parties need to sever financial ties with one another. This can often be a daunting and complex process. This may involve the transfer of ownership of real estate, cash, superannuation, corporate interests or other property from one party to another.

When you are separating, it is important to get legal advice from a Solicitor specialising in family law, in order to determine your entitlements and the advantages and disadvantages of any agreement you have reached. Then you can make an informed decision about whether this is right for you.

If you are able to reach an agreement with the other party, then this agreement should always be formally recorded.

There are two ways of recording your agreed property settlement:

1. A Consent Order; or
2. Binding Financial Agreement.

Your lawyer can advise you as to which of these options is best for you.

Why should I record the agreement?

There are a number of reasons why you should record the agreement:

1. In order to divide superannuation, your superannuation fund will be required Court Orders or a Financial Agreement;
2. A Consent Order & Binding Financial Agreement are legally binding and can be enforced if the other party does not comply with your agreement;
3. If you do not record your agreement, then you are at risk of a claim from your former partner in the future. Pursuant to the Family Law Act 1975, you have 12 months following the date of your divorce or two years from the date of a de-facto separation to file a claim for a property settlement. However, there are exceptions to this and an extension of time may be granted by the Court. If you do not file for divorce, then you remain exposed to a property settlement indefinitely.
4. It will provide structure for your settlement and ensure that it can be practically effected;
5. You may be entitled to stamp duty and other exemptions on the transfer of property which is effected pursuant to a recorded agreement.

The value of your property used for the purposes of a property settlement is the current value so in order to protect your future assets or an increase in the value of your assets it is important to record your settlement as soon as possible.

If you would like advice regarding a property settlement or the best way to record an agreement, please contact our office on 03 9804 0035 to make an appointment to see one of our experienced family law solicitors.



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