



Consent Orders or a Financial Agreement

Author: [Mona Emera](#)

Email: mona@emerafamilylaw.com.au

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Let's assume you have reached a [property settlement](#) agreement with your ex-partner following your separation. You've taken the steps needed to [work out what a fair split should be](#), gotten legal advice, and maybe attended mediation or reached a settlement via lawyer-assisted negotiations.

The next step is to make your agreement legal and binding. It is important to get legal advice about your property settlement agreement and to make sure that the agreement is formalised.

If the agreement is not formalised in the right way, then it remains open for either party to make a claim for property settlement against the other in the future, even after a time limit has expired. A statutory declaration is not legally enforceable and therefore does not provide the required protection.

There are two ways to make your property settlement legal and binding:

1. Application for consent orders; and

2. [Financial agreement](#)

What are property settlement consent orders?

In most cases, the easiest and most cost-effective way to make your property settlement agreement legal is to apply to the Federal Circuit and Family Court of Australia for consent orders.

A consent order is a written agreement that is approved by a Judicial Registrar of the Court as long as it is considered to be a fair and appropriate agreement. It is made up of two parts – an application for consent orders and the consent order.

The application contains information about the agreement:

- details of the parties;
- any children of the relationship;
- relationship details; and
- current assets and debts/liabilities.

This information is used by the Court to assess whether what you have agreed between yourself and your ex-partner is fair and equitable.

Property settlement consent orders set out the terms of the agreement and how it will be carried out. This is the document that will become your legally binding property settlement document. If you are applying for finance to keep the family home and pay your ex-partner out, the bank will generally want to see this document before formally approving your loan.

Once signed by the parties, the application and consent order are then sent to the Court for approval (filed on an online portal). A Judicial Registrar of the Court will assess the application and if satisfied, formally make the agreement and issue the parties with a “sealed order”. This means that the agreement becomes a legally binding agreement, and the Court can impose penalties if one or both of the parties refuses to follow the orders.

If your property settlement agreement is fair and has been prepared correctly, obtaining consent orders is usually a straightforward process, and no one needs to attend Court.

Processing times can generally take a few weeks from lodging your application, depending on how busy the Courts are, so keep that in mind.

Financial agreement to finalise your property settlement

In some cases, it might be appropriate to have a financial agreement instead of a consent order. A financial agreement might be required in cases where an agreement is unusual or complex or if it is not a “fair” agreement according to the normal principles of family law.

You can make arrangements that suit your circumstances, provided the financial agreement complies with the strict requirements set out in the legislation.

In order for your agreement to take effect, parties to a financial agreement must have obtained independent legal advice (from a lawyer), and a certificate confirming this has occurred must be annexed to the agreement.

The lawyer must advise on the effect of the agreement on the rights of that party and about the advantages and disadvantages of making the agreement at the time the advice was provided. The parties must engage their own lawyer to provide the advice; they cannot use the same lawyer.

These agreements are not approved or checked by the Courts, which means that it's important for each party to have legal advice to ensure they understand how the agreement impacts them and whether they should reconsider the agreement.

Should I have consent orders or a financial agreement?

There is no "one-size-fits-all". The circumstances of each relationship and subsequent separation are different.

Most importantly, it is crucial to get legal advice about your property settlement and which option suits your unique circumstances best.

What does it cost to make my property settlement agreement legal?

The cost will vary depending on the nature and complexity of your property settlement. In most cases, we offer a fixed fee to prepare your consent order or your financial agreement.

If you are formalising your agreement by consent orders, there is also a Court filing fee which will need to be paid in most cases, unless an exemption applies.

Need an experienced family lawyer?

Finalising your property settlement after separation is an important step in securing your financial future. Whichever option you choose, getting advice from an experienced family lawyer can make all the difference. At Emera Family Law, we offer a free first interview to find out exactly where you stand and what the best solutions are for you.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.