



Interim financial support after separation: spousal maintenance, partial property settlements and sole occupancy orders

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Separation is often overwhelming, and financial pressure can make it even harder. When one partner earns significantly more than the other, or if one partner has been financially dependent, questions quickly arise about who pays the bills, where each person will live, and how day-to-day expenses will be covered.

Australian family law recognises this challenge. The law provides several short-term solutions that can help people maintain stability until their property settlement is finalised. These include spousal maintenance, partial property settlements and sole occupancy orders.

This article provides a brief overview of each of these options, how the court decides whether to grant them, and what you should consider if you are thinking about applying.

Spousal maintenance after separation

[Spousal maintenance](#) is financial support paid by one former partner to the other. It is separate from child support.

Under the *Family Law Act 1975*, a person may be entitled to maintenance if:

- they cannot adequately support themselves; and
- the other party has the capacity to pay.

When spousal maintenance may be ordered

Examples of circumstances where maintenance may be ordered include:

- where one partner has been out of the workforce for many years raising children;
- where a partner has health issues or a disability that limits their ability to work; and
- where one partner earns significantly more, while the other has limited earning capacity.

The court looks at the applicant's reasonable living expenses and compares them with their income. If there is a shortfall and the other partner has the means to contribute, maintenance may be ordered.

How long does spousal maintenance continue?

Spousal maintenance is usually temporary. It is intended to provide support until the financially weaker partner can return to work, retrain, or until property matters are resolved. However, in some cases, longer-term or indefinite orders can be made.

Partial property settlement

Normally, separated persons do not receive access to funds until they have reached a final property settlement agreement and this agreement is made legally binding ([either through consent or court orders, or a Binding Financial Agreement](#)). However, there are times when one party needs urgent access to money prior to a final agreement being reached or a decision being made after a Final Hearing.

A partial property settlement allows a portion of the overall asset pool to be released early. This can be by agreement or by court order.

Situations where partial settlement may help before finalising a property settlement

- Paying for accommodation after separation;
- Covering legal fees;
- Providing immediate access to funds where one partner controls all the assets; and
- Supporting a partner who has no independent income.

The court is cautious about making these orders. It must ensure that an early release will not unfairly disadvantage either party when the final settlement is calculated. Usually, the amount released is relatively modest compared with the overall asset pool.

Sole occupancy orders in family law proceedings

Separation often raises urgent questions about the family home. What happens if both partners want to stay? What if living together is unsafe or intolerable?

A sole occupancy order is a court order giving one partner the exclusive right to live in the home, while the other must move out.

Factors the court considers in sole occupancy orders

When considering sole occupancy orders, the court looks at:

- whether there has been family violence;
- the needs of any children;
- the financial ability of each party to obtain alternative accommodation; and
- whether continued cohabitation is impractical or would cause significant hardship.

These orders are not made lightly. The court must balance both parties' rights to the property with the need to ensure safety and well-being.

How the court decides interim applications

All three types of applications - spousal maintenance, partial property settlement and sole occupancy - are considered interim measures. That means they are designed to provide short-term relief until a final decision is reached.

When deciding an interim application, the court does not examine every detail of the case. Instead, it looks at the available evidence and makes a practical decision about what is necessary in the short term.

The factors to be considered by the court will be dependent on the type of interim financial support sought. For more information and/or for advice on whether you may be eligible for interim financial support, we recommend seeking legal advice.

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Advantages and disadvantages of interim financial support options after separation

Advantages

- Provides immediate financial relief;
- Allows the more vulnerable partner to cover essential living costs;
- Can reduce conflict by setting clear expectations in the short term; and

- Helps ensure the more vulnerable partners' and the children's needs are met without delay.

Disadvantages

- Interim orders can be expensive and time-consuming to obtain if contested;
- They do not resolve the bigger picture – final property and parenting arrangements remain outstanding; and
- An interim order is temporary and may be adjusted in any final property settlement agreement.

Alternatives to court orders

While the court can make interim orders, many couples reach agreements regarding spousal maintenance, partial property settlements and occupation of the former family home without going to court. Mediation or negotiation through lawyers can achieve similar results more quickly and at lower cost.

Reaching agreement outside court keeps control in the hands of the separating couple, rather than leaving it to a judge.

Following separation, couples should also consider:

- Whether your former partner has an obligation to [contribute to the home loan repayments and/or utilities](#); and
- Whether you or your former partner has an [obligation to pay child support](#) to the other.

Practical tips if you are considering interim financial support

- Get legal advice early - family lawyers can explain your likely entitlements and obligations;
- Gather evidence of your income, expenses, assets and debts - [full financial disclosure](#) is required;
- Prepare a budget that shows your reasonable needs;
- Think carefully about whether court action is necessary, or whether negotiation might achieve the same result; and
- Prioritise safety - if there has been family violence, urgent court orders may be essential.

Get help from a family lawyer

If you are struggling financially after separation, you do not have to manage it alone. Spousal maintenance, partial property settlements and sole occupancy orders are tools designed to provide stability while longer-term arrangements are worked out.

Every situation is unique. A family lawyer can help you understand your options, assess whether you are eligible for support, and guide you through the process of negotiation or applying to the court. Early advice can make a big difference to your financial security and peace of mind during this difficult transition.

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.