



Can I claim more after finalising property settlement?

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Family law [property settlements](#) are intended to be binding. Individuals who have separated from their ex-spouse are entitled to certainty once their property settlement has been finalised.

People need to be able to move on with their lives emotionally and financially, without concerns that their ex-spouse can come back and seek more from their financial settlement, or fears that they can be dragged back into protracted negotiations or litigation. For these reasons, the Court will only entertain the possibility of reopening property settlements in limited circumstances.

Whether you can claim more after finalising your property settlement depends on whether your case meets the grounds set out in the *Family Law Act*. Further, *how* you formalised your property settlement can impact whether reopening it is a viable option for you.

It is important to note that provided a property settlement agreement has been appropriately formalised, the law does not provide for a party to claim more a later date simply because they are experiencing regret or have changed their mind.

We had a verbal or informal property settlement agreement- can it be revisited?

Verbal or informal property settlement agreements will not be binding, and in most cases, will have little impact on the decision a court will make if a party later decides they want to claim more after finalising their settlement in this way. This includes instances where you have a written agreement via an exchange of emails or text messages, and even where you write your agreement on paper and sign it together.

Because such agreements are not binding, once you and your former partner have agreed about property and financial matters, it is crucial that you seek legal advice about formalising your agreement. Important time limits can apply and can impact your property settlement agreement.

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How do I formalise my property settlement agreement?

There are only two types of documents that can be prepared to formalise your property settlement and make the terms binding.

They are:

1. An Application for Consent Orders; and
2. A Binding Financial Agreement.

You can read more about this in our earlier article, [“Consent Orders or a Financial Agreement”](#).

If you had your property settlement formalised using one of the above documents, the circumstances in which you might be able to claim more after settlement are discussed below.

Revisiting property settlement where we had court orders made by consent

A consent order is a written agreement that is approved by a Registrar of the Court, as long as it is considered to be a [fair and appropriate agreement](#). Once approved, a Registrar of the Court will formally make the agreement and will issue the parties with a “sealed order”. This means that the agreement becomes a legally binding agreement.

There are some circumstances in which a consent order may be “set aside” (i.e. overturned so that a reconsideration of the property settlement can occur).

Under the *Family Law Act*, an earlier order may be varied or set aside if the court is satisfied that any of the following apply. Note that this also applies where you had court orders that were *not* made by consent between you and your former partner but rather were determined by the court.

1. There has been a miscarriage of justice by reason of fraud, duress, suppression of evidence (including failure to disclose relevant information), the giving of false evidence or any other circumstance.

This is why it's crucial for parties to comply with their duty to provide **full and frank disclosure about their assets and liabilities**.

1. Circumstances have arisen since the order was made, meaning it is impracticable for the order to be carried out, or impracticable for a part of the order to be carried out.

For example, where there is an order for a car to be transferred to a party, but the car is involved in an accident and written off prior to the transfer.

1. Where a person has defaulted in carrying out an obligation and, circumstances that have arisen as a result of that default mean it is just and equitable to vary the order or to set the order aside.

This is why you should do all that you can to comply with your obligations under your property settlement orders, including due dates for actions to occur. If you don't, the other party could seek to change the orders, and you may end up with new orders that are less desirable for you.

1. Circumstances have arisen since the making of the order, being circumstances of an exceptional nature relating to the care, welfare and development of a child of the marriage, and the child or the applicant (where the applicant has caring responsibility for the child), will suffer hardship if the court does not vary the order or set the order aside.

This ground is less so that you can control. For example, it may apply where a child becomes injured following their parents' property settlement being finalised, and the injuries are significant enough to cause a parent to suffer hardship (such as needing to leave the workforce to care for the child, or incurring significant medical expenses in relation to the child's injuries).

1. A proceeds of crime order has been made covering property of one or both parties, or a proceeds of crime order has been made against a party.

A proceeds of crime order can result from proceedings brought against an individual by the government, which provides for the restraint or forfeiture of property connected with criminal activity. If property you received under a family law settlement was initially gained or acquired through criminal activity, you could find your property orders being set aside and revisited (sometimes, as a result of such an application being brought by the government).

Revisiting property settlement where we had a Binding Financial Agreement

A [Financial Agreement](#) sets out what the parties have agreed will happen with their property if they separate (i.e. a pre-nuptial agreement) or after they have already separated. Essentially, parties entering into a Financial Agreement are signing a legal contract which stipulates how their property will be divided in the event of separation.

The intention of a Financial Agreement is to prevent the court from becoming involved in how property will be divided. However, a court may become involved in these issues if one party brings an application to set the Financial Agreement aside.

Under the *Family Law Act*, there are [certain criteria that a Financial Agreement must meet for it to be binding](#). This highlights the importance of seeing an experienced family lawyer to provide advice on and document your Financial Agreement.

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Even where you have a competent lawyer acting for you to finalise your Financial Agreement, there may still be scope for a party to apply to [have the Financial Agreement set aside by a court, if certain grounds are met](#).

As with consent orders, to mitigate the possibility of a party applying to set the agreement aside, you should ensure that:

1. You have complied with your duty [to make full and frank disclosure](#).
2. You are not entering into the agreement for other purposes such as to defraud a creditor, to defeat the interests of another party who may make a claim for property settlement against you, or to avoid your property being confiscated under a proceeds of crime order;

3. You are not engaging in any conduct that may be perceived as placing duress, undue influence or pressure on the other party;
4. You have engaged a competent lawyer who has experience drafting Financial Agreements.

As long as the Financial Agreement complies with the relevant formalities and has not been set aside, the Court has no power to hear and determine any proceedings relating to matters which are addressed by the Financial Agreement. If the Court decides that a Financial Agreement should be set aside, then it will determine the entitlements of the parties under the ordinary family law principles.

Seek legal advice from an experienced family lawyer

Even if your circumstances give rise to the possibility of setting aside your previous property settlement, other factors to consider will be whether the claim is viable in light of:

- the time passed since separation or since your settlement;
- the additional costs; and
- the time and emotional costs of reopening these matters.

The lawyers at Emera Family Law can help you weigh up these issues and provide detailed advice about the prospects of such a claim based on your individual circumstances.

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.