



Selling property after separation but before property settlement

Author: [Jessica Black](#)

Email: jessica@emerafamilylaw.com.au

Date: Monday March 9, 2026

When a relationship ends, one of the biggest questions many couples face is what to do with the family home or other real estate. In many cases, selling the property may feel like the best way to move forward financially and emotionally. But what happens if the property is sold before your [family law property settlement](#) is finalised?

In Australia, there is no rule that prevents a separated couple from selling property before formalising their property settlement. However, this must be handled carefully, ensuring that the sale proceeds form part of the asset pool to be divided between the parties. Without proper planning and agreements in place, selling too early can create disputes, delays and financial risk.

This guide explains the key considerations, risks and steps to take when selling property after separation but before final settlement has occurred.

Can I sell real property before our property settlement is complete?

Yes. Separated couples in Australia can sell real property before they have finalised their property settlement. However, the sale does not finalise property matters between the parties. Instead, the proceeds of sale form [part of the asset pool to be divided between the parties](#).

It is important to note that both parties usually need to agree to the sale. If the property is jointly owned and the other party does not agree to sell, you may require an order of the Court.

If only one person is on the title, whilst they may be able to sell the property without the consent of the other party, this may lead to various consequences. For example, the other person may lodge a caveat on the property to protect their interest pending final property settlement, which is likely to impede the sale.

Why people sell property before settlement

There are practical reasons couples may choose to sell early, including:

- needing funds to rehouse themselves;
- avoiding mortgage stress or arrears;
- reducing financial ties and potential conflict;
- taking advantage of favourable market conditions;
- avoiding ongoing maintenance and holding costs.

Whilst selling early may be beneficial, it is important that the process is managed properly.

Risks of selling property too soon

Selling before settlement can carry risks, including:

- disagreements with respect to the conduct or mode of sale, including selling agent or reserve price;
- arguments over how sale proceeds should be held;
- one party attempting to access funds unilaterally or unfairly;
- taxation and financial consequences;
- emotional pressure to accept a lower offer.

To avoid these issues arising, legal advice and clear agreements are essential before the property is placed on the market for sale.

[FREE ADVICE FROM A FAMILY LAWYER: 03 9006 8907](https://www.familylawyer.com.au)

Agreement on the sale process

Before selling, both parties should agree on key decisions, such as:

- whether the parties are to have joint conduct of the sale;
- the real estate agent;
- the conveyancer;
- the terms of sale, including the reserve price and mode of sale (auction or private sale);

- marketing strategy;
- any maintenance and/or repairs to be carried out prior to sale, and how such maintenance and/or repairs are to be paid;
- how sale proceeds are to be distributed and held pending final property settlement.

Any agreement or orders should also provide for what happens in the event of a dispute arising between the parties with respect to these decisions.

What happens to sale proceeds?

Proceeds from the sale will usually be placed into a trust account held by one party's lawyer on behalf of the parties or a joint account requiring joint signatory pending final property settlement or further written agreement between the parties.

The Court will consider the sale proceeds as part of the total property pool. One party cannot simply take their assumed share of the proceeds without agreement or orders. Attempting to do so may result in legal action and financial penalties.

Can one party stop the sale?

If both parties are on the title, both must sign the sales authority and Contract of Sale. If one party refuses, steps may include:

- negotiation between the parties;
- [mediation](#) or [family dispute resolution](#);
- Court application seeking orders for the sale or injunctions preventing the sale.

Court orders and injunctions

If a dispute arises with respect to the sale of a property, the Federal Circuit and Family Court of Australia can:

- order that the property be sold;
- prevent a person from selling without consent;
- protect sale proceeds;
- control distribution of funds.

Court involvement is usually a last resort, but provides a safeguard where cooperation fails.

Practical tips

To protect your interests:

- Seek advice from a family lawyer before signing anything;

- Agree in writing as to the terms of sale;
- Direct sale proceeds to be held in a lawyer's trust account;
- Keep communication civil and documented;
- Do not rush decisions due to emotional pressure;
- Consider financial and/or accounting advice with respect to any taxation or other consequences.

A careful, step-by-step approach reduces conflict and protects both parties.

Frequently asked questions

Can we divide the money before settlement is finalised?

Not without agreement or Court Order. Sale proceeds must otherwise remain protected pending final property settlement.

What if my former partner refuses to sell?

Negotiation, dispute resolution or Court orders may be required to force the sale.

What happens if one person takes money from the sale?

The Court can account for it in the overall settlement and may impose costs or other penalties.

Get help from a family lawyer

Selling property after separation but before property settlement can be a practical way to move forward, but it requires cooperation, planning and legal safeguards. The decision affects your long-term financial position and should be taken with care.

The best approach is to agree on sale arrangements, protect the proceeds in trust, and formalise your property settlement by way of an [Application for Consent Orders or Binding Financial Agreement](#). Clear communication and professional advice helps reduce stress and protect your financial position as you transition to the next stage of life after separation.

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.