

Family Law Financial Settlement (Consent Orders)

The who, what, when and why of Consent Orders

If you have separated from your partner (whether from a marriage or a de facto relationship), you will need to consider the division of your property.

If you and your former partner have reached an agreement about how to split your finances, there is no need to go through the arduous process of court proceedings.

However, you should formally document your agreement to make sure that you and your former partner:

- Have stability and peace of mind about your agreement;
- Can protect your assets and avoid future disputes; and
- Give legal enforceability to your agreement.

One way to document your mutual agreement in accordance with the Family Law Act 1975 is by Consent Orders.

Who can enter into Consent Orders?

Consent Orders can be entered into between separated de-facto or married couples.

Parties are considered to be de-facto if you are in a genuine domestic relationship together and **at least one** of the following criteria apply:

- The period for the de facto relationship was at least 2 years;
- You have a child with your de facto partner;
- That the relationship is or was registered under in a State or Territory of Australia; or
- When assessing the breakdown of a relationship because of significant contributions made by one party, the failure to issue Consent Orders would result in a serious injustice.

What are Consent Orders?

Consent Orders are a type of document (like a contract) that is signed by you and your former partner then submitted to the Court where it is 'sealed' and becomes binding.

Consent Orders document the terms of settlement you have agreed with your former partner about your finances and property.

The terms of settlement in your Consent Order can be complex or simple and tailored to your needs. Typically, they include:

- Property orders about how your assets are divided, such as for the transfer or sale of real estate, separation of bank accounts, vehicles, personal belonging, shares, investments, etc, or for the payment of a sum of cash from one party to another to buy them out;
- For business owners and investors, it is also important to ensure that the Consent Orders cover off on the transfer/ownership/control of various trading and investment entities. This may require a party to resign from positions within entities (i.e. directorship and/or as trustee), transfer shares or units, or disclaim an interest in a trust;

- Superannuation orders that can involve splitting superannuation interests, rolling super out of a self-managed super fund or simply protecting the super you have acquired from each other;
- Spousal maintenance orders if you and your former partner have agreed that one party will provide the other party with ongoing financial support; and
- Debts and liabilities orders that are addressed as part of the division of property such as the allocation or discharge of mortgages, loans, credit card debts, etc, and severing responsibility for any potential future liabilities.

When can you apply for Consent Orders?

An Application for Consent Orders can be filed any time after separation but should to be filed within 12 months of a divorce or two years since the end of a de facto relationship.

If you are filing beyond this time frame, you will need to seek leave of the Court to file the application.

Process for applying for Consent Orders

Consent Orders are prepared in three stages:

1. Negotiation
2. Drafting
3. Court application

Negotiation

In negotiating a settlement, it is important to consider the requirements by the Court. This involves:

1. Identifying the net value of the parties' assets;
2. Considering the parties' contributions towards the relationship;
3. Addressing any future needs either of the parties may have relating to factors such as their earning capacity, age, health and whether they have the care of children; and
4. Ensuring that the settlement is 'just and equitable'.

Some parties may come to lawyers already with an agreement that they want to formalise in writing.

Other parties may come to lawyers to assist them to negotiate the terms of their Consents Orders with their former partner.

Either way, we are able to assist you with finalising your Consent Orders at whatever stage of the process you are in.

Drafting

The Consents Orders themselves will form two documents:

- An Application for Consent Orders: This is a Court form that must be completed by both the parties to provide the Court with details of their financial positions. Each party is also required to state on oath that they have been full and frank to the other (i.e. that they have disclosed all information relevant to the decision to settle).
- A Consent Minute of Order: This is a document which outlines the terms of the agreed settlement and contains the wording to give effect to the settlement. This is what the Court seals as the record of settlement, so it needs to be clear and comprehensive.

Court application

The Court will only issue a sealed Consent Order if the terms proposed by the parties are considered to be 'just and equitable'.

This means that the Court must determine that, in consideration of all matters between the parties, the outcome proposed by the Consent Orders is fair.

You do not need to attend Court when the Judge makes a determination on what is 'just and equitable'. Consent Orders are signed by the parties and submitted online to the Court registry. The Judge then considers the Consent Orders in chambers (this means by the Judge alone) and will provide a sealed copy of the Consent Orders electronically once approved.

When parties have come to a mutual agreement about their property split it is very rare for a Judge not to approve the Consent Orders. If the Court does not consider the terms are 'just and equitable', in that scenario, the parties have the option of renegotiating the settlement to make it more balanced, or to document the 'unfair' arrangements through a Binding Financial Agreement.

Can you set aside Consent Orders?

Once the Court seals the Consent Orders, the terms are intended to be final. It is difficult to set aside the agreement unless there is a valid reason, for example:

- A party entered into the agreement under duress (i.e. was forced to agree);
- There was not full and frank disclosure of the parties' financial positions;
- There has been fraudulent behaviour;
- It is impossible to give effect to the orders; or
- There have been exceptional circumstances relating to one of the parties' children that means the orders are no longer reasonable or workable.

Our approach

Separation isn't easy. Once a resolution is reached, you should be able to expect some clarity and peace of mind to be able to move on with your life.

In our view, the key is to document your family law settlement properly.

We believe that Consent Orders are an excellent way to finalise your financial relationship in a way that helps you preserve your personal relationship. Consent Orders are also a very cost-effective option as they can save you from the very expensive and stressful process of litigation.

We are experienced in commercial and business law, which gives us an edge in ensuring that your Consent Orders cover all aspects of your financial lives – your personal assets, your business assets, trust assets, etc. We will also provide advice and prepare the Consent Orders to make the settlement as tax-effective as possible.

What next?

Our aim is to help you finalise your property settlement in a comprehensive and efficient way, so that you can move on with your life and leave the stress of separation behind. If you would like to speak to someone about your family law matter and utilising Consent Orders, call us on [1300 654 590](tel:1300654590) or email us at wehelp@andreyev.com.au.

Further information can also be found on our website at www.andreyev.com.au.