



Can I claim more after finalising property settlement?

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When a [property settlement](#) has been finalised, either through Family Court Orders or with a [Binding Financial Agreement](#) (BFA), the parties' financial relationship ends on a full and final basis. However, there are some instances where the Court may set aside a property settlement in order to re-assess and possibly vary the outcome. This blog explores what happens if you finalise your property settlement but then seek to claim more from the property pool than you originally received.

Your property settlement was finalised by Family Court Orders

A financial/property matter can be resolved by way of Orders made in the Federal Circuit and Family Court of Australia or the Family Court of Western Australia (the Court). This can be either by a Final Order made by the Court after trial or by Consent Orders, where the parties agree about the outcome.

If you finalised your property settlement with Family Court Orders, then it is highly unlikely you will be granted leave (permission) to bring the matter back to Court to seek additional property (i.e. money or assets). The Court is generally reluctant to re-open property settlement proceedings once they have been finalised.

There are some limited circumstances, however, where the Court may grant leave to re-open a property matter and [vary or set aside the Final Orders](#).

When might the Family Court consider changing Final Orders for property settlement?

The Court will consider applications where you are able to prove your partner did not [disclose their true financial position fully and frankly](#) or there is a serious allegation of fraud or duress. However, any alleged fraud will need to be proven to the Court.

In order for the Court to vary or set aside the Orders, a party must prove the other party failed to disclose a substantial asset and it would be appropriate to vary or set aside the Orders. For example, the addition of the asset into [the property pool](#) would have changed the outcome of the Final Order.

The Court may also consider setting aside or varying Final Orders where exceptional circumstances have arisen since the making of the Orders relating to the care, welfare or development of a child or children of the parties and the child or the party caring for the child will suffer hardship if the orders are not set aside or varied. For example, a child of the parties develops a medical condition since the making of the Final Orders, which requires ongoing financial assistance to manage and care for the child.

Other circumstances which warrant the Court considering setting aside or varying Final Orders include where it is impractical for the Final Orders to be carried out, or there has been a proceeds of crime order to recover property dealt with in the Final Orders.

Additional considerations, including the potentially [high legal costs](#) involved in making such applications, need to be considered when seeking to set aside or vary Final Orders, as these costs may outweigh any possible benefit to you.

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Your property settlement was finalised by a Binding Financial Agreement (BFA)

Separated parties are always encouraged to agree on their financial and property arrangement without the need to engage the Court.

In many cases parties will negotiate an agreed settlement between themselves, sometimes with the assistance of lawyers, and formally record that agreement into [a binding financial agreement](#).

BFA's are written agreements that set out how your assets will be divided in the event of separation. They can be applicable to both de facto relationships and marriages.

When might the Family Court consider setting aside a Binding Financial Agreement?

The circumstances where a Court may make an Order to set aside a BFA are very similar to those listed above regarding Final Orders. They are as follows:

Misrepresentation of financial position or fraud;

Fraud against third parties;

Uncertainty and incompleteness;

Impracticality;

Unconscionable conduct, duress, undue influence; and/or

Change of circumstances for the children.

If the Court decides to set aside your BFA, you will then be permitted to bring a fresh application to the Court for your property settlement. This could see a different outcome with regards to the division of property.

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If you don't have either a Binding Financial Agreement or Court Order

If you have not formally recorded a property settlement through a BFA or Final Court Orders, then you may be able to bring a claim against your former partner's assets some years after separation or divorce. However, there are some things you may wish to consider before doing so.

If you were in [a de facto relationship](#), the Family Law Act (the Act) states that you only have 2 years from the date of separation to file an application for property settlement in the Court. If you were married, it is only 12 months after the divorce order was granted.

You can read more about time limits for property settlement in our earlier blog, ["Time limits for family law property settlement"](#).

If a significant period of time has passed since your separation or divorce, you must demonstrate to the Court why you should be granted leave to make an application for property settlement out of time. The Court will consider the following when exercising its discretion:

The length of delay and reasons for the delay;

The prejudice that could be caused to the other party;

The merits of your case; and

The degree of hardship caused if leave was not granted.

If you missed your deadline to file a financial/property settlement application, there is nothing preventing you and your former

partner from trying to negotiate with each other.

It's worth noting your former partner would be under no obligation to enter into negotiations with you. In some instances, it may be in your former partner's best interest to not respond until you have obtained leave from the Court to apply for a property settlement.

How can a family lawyer help?

If you have separated, it is imperative that you formalise your property settlement in a timely manner in order to avoid the other party from making a claim in the future. We can help you decide whether you should finalise your matter by Court Orders or a BFA.

Alternatively, if new information has come to light about your former partner's financial position at the time of separation, it is important to seek legal advice as soon as possible. There may be grounds to set aside any agreement, and you should act swiftly.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.