

Can I change my Family Court final orders?

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It's not unusual for someone to look at re-evaluating obligations under Final Orders made by the Family Court in property matters and/or parenting arrangements. The question is, can those Final Orders (including Consent Orders) be changed?

The pandemic brought a lot of volatility to our lives, and this continues with many things such as the global economic climate. With this in mind, many people are reassessing their financial and personal position with a view to options to improve their situation.

What are final orders?

Often separated, parties will seek to finalise parenting and/or property matters by way of Orders from the Court.

These Orders can be reached by agreement between the parties, known as "Consent Orders", or if no agreement can be reached, the Court will make a judicial decision and make Final Orders subject to their judicial discretion.

Can Final Orders be changed?

Yes; in some circumstances. Consent Orders or Final Orders made by the Court can be varied.

Can you change Final Orders for Parenting?

In many cases, Parenting Orders are made when children are young. Due to the changing nature of families and the needs of children, arrangements made when children are young may not be suitable or applicable as children grow older and family circumstances change.

It is important to note that parties can always change their Final Orders by agreement.

If a party seeks to vary Final Orders and no agreement can be reached between the parties, an application must be made to the Court to change or vary final Parenting Orders.

If there are final Parenting Orders, a party seeking to change or vary these orders must demonstrate to the Court there has been a "significant change in circumstances" from those at the time the Final Orders were made, to warrant the Court re-opening the proceedings.

What is considered a "significant change in circumstances"?

Establishing a "significant change in circumstances" is known as the rule in Rice v Asplund; a Full Court decision from 1979. The effect of this rule is to prevent endless litigation between parties and to limit the harm of litigation on families, particularly children.

As the nature of peoples' day-to-day lives changes, for example, due to work commitments or entering into a new relationship, examples of significant change in circumstances will vary from family to family, but may include one of the following:

A party is seeking to relocate with a child;

One or more of the parties has re-married or re-partnered; or

- There has been abuse of a child.

Final Parenting Orders are never final if there is a significant change in circumstances that warrants a party to request the Court to vary or change in the arrangements.

Final Parenting Orders are able to be varied if the appropriate circumstances exist.

Can you change Final Orders for Property?

The Court is usually reluctant to re-open property proceedings once Final Orders have been made, as the *Family Law Act* states that one of the roles of the Court is to make orders that finally determine the financial relationship between parties.

However, there are limited circumstances where Final Orders for a property settlement can be varied or set aside.

If the parties to the orders agree to vary or set aside the orders;

A party has defaulted in carrying out an obligation or failed to follow one or more of the orders;

There has been a miscarriage of justice, fraud, duress or the giving of false evidence during the initial proceedings;

It is impractical for the Final Orders to be carried out; or

There has been a proceeds of crime order to recover property under the orders.

What constitutes a miscarriage of justice?

The Court has the power to set aside or vary Final Orders if there has been a miscarriage of justice.

If, for example, following the making of Final Orders, evidence has come to light that material information was not disclosed with respect to the property of a party to the orders. This may include a party failing to disclose funds held in a bank account, ownership of shares or a claim (beneficial or otherwise) to property held in a trust or some other commercial entity.

If a miscarriage of justice is found to have occurred, evidence will need to be provided to show not only that there has been a miscarriage of justice but that it would be appropriate to vary or set aside the orders.

For example, if new evidence has come to light that details of a bank account were not disclosed prior to the making of the Final Orders, but even if they had been disclosed, it would not have changed the outcome of the Final Orders, it is unlikely the Court will vary or set aside the orders.

The miscarriage of justice must be of a material matter. This reinforces the obligation of parties to property proceedings to ensure they comply with their obligations of disclosure.

What constitutes a “default” of obligations under the Final Orders?

If a party defaults on an obligation under Final Orders, for example, there has been a failure to transfer property to a party, the Court may set aside or vary the Final Orders to rectify this default.

Setting aside Final Orders for Property due to hardship of children or carers of children

Another potential ground that the Court may set aside or vary Final Orders for Property, is where exceptional circumstances have arisen since the making of the Final 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.

An example of this may be:

A child of the parties develops a medical condition since the making of the Final Orders;

The condition requires ongoing financial assistance to manage and care for the child; and

the party who cares for that child will suffer financial hardship if the Final Orders are not varied or set aside so as to provide a greater division of property to enable them to provide financial assistance to the child.

At Meillon & Bright, our team of family lawyers have experience with applying for and challenging applications to set aside or vary Final Parenting and Final Property Orders.

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.