

My ex-partner is delaying our property settlement

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When separating from a former spouse or de-facto partner, it is common for parties to work together to reach a settlement on their financial relationship (property settlement) so both parties can move on to the next stage of their life. However, it is just as common for one party to delay finalising that property settlement. We explore some options available to you if your ex-partner is deliberately delaying property settlement.

Delays in any family law matter can cause frustration and increase conflict and tension between parties (and often third parties, including the parties' children).

It may be financially advantageous for one party to delay a financial settlement. For example:

one party could be continuing to live and enjoy the benefit of a property or other assets;

an asset is about to increase in value; or

one party is due to receive an inheritance or another windfall (such as an insurance payout).

How is your ex-partner delaying property settlement?

There are several ways your former partner may delay reaching a property settlement, some being obvious and others not so obvious.

Failing to disclose information/documents/assets/debts

For a property settlement to occur, both parties are obligated to provide their former partner (or their solicitor) with documents and information relating to their personal and joint financial circumstances.

This obligation is mandated in the *Federal Circuit and Family Court of Australia (Family Law) Rules* 2021 in New South Wales and in the *Family Court Rules* 2021 in Western Australia.

In our blog, "What is a Duty of Disclosure", we discuss the obligations that flow from the legislated requirements for disclosure during your family law matter.

The obligation to disclose includes providing various documents such as bank statements, taxation returns (personal and company if relevant), payslips, employment contracts and valuations for property or other items such as vintage cars or antiques.

If your partner refuses to disclose information or documents, you will be unable to engage in meaningful negotiations, let alone negotiate or reach a settlement that is just and equitable.

Missing loan and mortgage repayments

Delayed or missed loan repayments, particularly mortgage repayments, can cause delays in the refinancing of loans.

If you are seeking to buy out your former partner's share in a property, banks or financial institutions often require a period of six months of on-time loan repayments. Missed loan repayments can often cause issues with qualifying for refinancing.

Failing to engage with you or ignoring contact you have made

Former partners can simply refuse to engage or fail to respond to requests for disclosure or invitations to mediate. Or they can ignore you or your solicitor or other advisors when seeking to negotiate a property settlement.

Disadvantages to delaying a property settlement

Delaying your property settlement can be disadvantageous for the following reasons:

The value of your joint asset pool is calculated at the date of the property settlement, not the date of the separation. The effect of this is that any property acquired post-separation is included in the total property pool;

Assets can be sold or disposed of, lowering the value of the asset pool. This includes withdrawing money from a joint bank account, drawing down on the mortgage, increasing credit cards to their limits or attempting to sell an asset such as a car or house, or taking valuable items;

Assets could be disposed of that you didn't even know existed; and

In the event of the death of your former partner, you may miss the opportunity of a settlement altogether.

Time limits to finalise your property settlement

In our blog, "Time Limits for Family Law Property Settlement", we discuss the applicable time limits to commence property proceedings in the Family Court.

For parties to a marriage, the time limit is 12 months from the date on whichthe divorce order becomes final.

For de facto partners, the time limit is 2 years from the date of separation.

What to do if your former partner delays your property settlement

If you are attempting to negotiate and reach a property settlement with your former partner and they are delaying or frustrating this process, it is important to seek legal advice from an experienced family law solicitor.

Get help from a family lawyer

Meillon & Bright's team of experienced family lawyers can assist you with working through the various options to engage with your former partner to progress your property settlement or, the options available to commence proceedings in the Family Court if necessary.

Our team of experienced family lawyers regularly work with other professional advisors, including financial advisors, tax specialists and accountants, to craft property settlements in a way that maximises the practical outcomes for the parties and minimises potential taxation consequences.

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.