

Can I finalise property settlement without getting a divorce?

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After separation or divorce, things can get confusing and sometimes overwhelming. It can be a stressful and emotional time. There may be several family law processes all happening at the same time; for example, the divorce, finalising property settlement and negotiating parenting arrangements where there are children of the relationship. Many of these will have timeframes you need to be mindful of and adhere to. In this blog, we specifically look at the process of how divorce intersects with property settlement.

Divorce and property settlement are two separate tasks you need to work through after a marriage breaks down.

What is a divorce?

Divorce is the legal process that formally ends your marriage. Australia is a “no-fault” jurisdiction, which means there is no requirement for one party to be responsible for the breakdown of the marriage.

The process for divorce in Australia is relatively simple in most cases. You must demonstrate to the Court that:

you and your spouse have separated;

the separation was at least 12 months prior to your application for divorce; and

your marriage has irretrievably broken down.

You must also satisfy one of the following requirements:

- You regard Australia as your home and intend to live here indefinitely;
- You are an Australian citizen or a permanent resident; or
- You ordinarily live in Australia and have done so for the12 months immediately prior to applying for divorce.

In some circumstances an application for divorce can be made if you and your partner have separated and remain living under the same roof together.

You can read about all of the considerations in applying for divorce in our blog, "How to get a divorce in Australia".

What is a property settlement?

A family law property settlement is in relation to dividing the assets, liabilities and superannuation entitlements of couples once they have separated. Property proceedings may be issued if either party is either present or ordinarily resident in Australia or an Australian citizen when the application is filed.

You can read more about the requirements for property settlement in our earlier blog, "How does the Family Court determine property settlement matters?".

Either party may commence property settlement negotiations after separation has occurred (whether married or in a de facto relationship). This can be done between the parties themselves or with the assistance of a family lawyer.

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Before you can make an application to start any Court proceedings for property settlement, certain pre-action procedures must be complied with unless an exemption to this requirement applies. You can read more about this on the Federal Circuit and Family Court of Australia website or on the Family Court of Western Australia website.

Do I need to wait until we are divorced to commence property settlement?

The short answer is no. Married couples do not have to be divorced to work out a property settlement. These are two separate legal processes.

It is worth noting you could well be separated but not divorced for some years and still not have finalised your property settlement. However, leaving such a long period of time between your separation and property settlement could significantly impact your

settlement. For example, if you have accumulated superannuation entitlements or other assets in the post-separation period, the higher value of these assets will be factored into future property settlement negotiations.

Time limits in family law property settlement

In most cases, it is best to obtain a property settlement before you apply for a divorce. This is due to the strict time limit to organise a property settlement after the divorce has been granted.

Once you are divorced, you have 12 months to work out your property settlement or apply to the Court to divide property. If you were in a de facto relationship (not married), you have a 2-year time period to finalise your property settlement or apply to the Court to seek a division of property.

You can read more about how these time limits work in our earlier blog, "Time limits for family law property settlement".

How can a family lawyer help?

Every family law case is different. Whether you are trying to work out which step to take first after separation, or if you are already divorced and haven't finalised your property settlement, seeking advice from an experienced family lawyer can help you secure your financial future. Our team at Meillon & Bright are here to help.

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.