

Can I be forced to sell the family home after separation?

Date: Sunday November 16, 2025

Separation can be an extremely emotionally challenging experience. A common concern after separation is consideration of the ownership of the family home. In Australia, the family home will form part of the joint asset pool when negotiating a property settlement after separation or divorce.

The Court can order the sale of the home (or any other asset), but this is not automatic. Many couples agree for one to keep the home and refinance the mortgage, and if required, a payment is often made to the other party in the settlement. This article explains when a sale may be ordered, what the Court looks at, and the practical options that can help you plan with fewer surprises.

When might the Court order the sale of the family home?

The Federal Circuit and Family Court of Australia (in states and territories other than WA) and the Family Court of Western Australia can order the sale of the home to make provision for a fair division of property. This power comes from the Family Law Act 1975 and the Family Court Act 1997 (WA) (for de facto partners in WA), which allows the Court to make any order it considers "just and equitable". This can include selling the home, selling it later, or transferring it to one person with a payment to the other.

A sale is more likely if:

neither person can afford to retain the property and provide an agreed or ordered cash payment to the other person;

there is a high mortgage or debt risk, and a sale protects the remaining equity;

both people agree for the property to be sold;

the equity in the home is required to fund an agreed or ordered payment to the other person.

What the Court considers in a property settlement

The Court decides a property settlement in broad steps. Understanding these helps explain why a sale might be ordered.

The Court will:

identify the total property pool available for division;

assess each person's financial, parental, and homemaking contributions during the relationship;

- consider future needs (e.g. who cares for children, income differences, health needs, ages);

decide whether the overall result is "just and equitable".

If children live mainly with one parent and stability is important, and that parent wishes to retain the property, the Court will consider this as part of the matrix in their decision-making in determining the terms of a property settlement.

Any agreement in relation to the sale of the property or one party retaining the property can be formalised by way of consent orders or a binding financial agreement. Family law consent orders are legally binding agreements made between separated parties.

Consent orders are legally binding agreements made between separated parties. They must be approved by the Federal Circuit and Family Court of Australia, and for those in WA, the Family Court of Western Australia. A binding financial agreement is a private contract requiring both parties to have independent legal advice, amongst other requirements.

What if one party refuses to sell

If one party refuses to sign sale documents after agreement or a Court order, the Court can:

appoint a registrar or independent person to sign the documents in place of the refusing party;

make possession orders so the property can be prepared for sale;

set a minimum price, sale method and agent, and allocate who pays which costs;

make enforcement orders to ensure the sale and distribution of proceeds happens.

In urgent cases, the Court can make interim orders for an early sale if the mortgage is at risk or the equity might be lost.

Living under the same roof during separation

You do not have to leave the home just because separation has occurred. If living together under the same roof is unsafe or not possible, the Court can make exclusive occupation orders so that one person lives in the home and the other person moves out.

This can be a short-term arrangement to manage risk, reduce conflict or support childrens' routines.

You can read more about this scenario in our earlier blog, "Separated but living under the same roof".

Until settlement is finalised, both people attempt to agree on who pays the mortgage, rates, utilities and outgoings for the property. If no agreement can be reached, the Court can make interim financial orders about who pays the outgoings for a property.

Practical steps to protect your interests in the family home after separation

Early planning can reduce stress and cost.

Gather documents such as mortgage statements, title details, rates and insurance;

Order a market appraisal or valuation so you have a realistic valuation of the property;

Contact your lender about your refinance capacity and borrowing limits;

List all assets, debts and superannuation and note who is the registered legal owner;

Maintain records of who pays the mortgage and major expenses after separation;

Avoid increasing joint debt or redrawing equity without written agreement;

Seek advice from an accountant or financial advisor;

Put in place safety measures if there are family violence concerns and seek legal advice promptly.

How a Court-ordered sale usually works

If the Court decides on a sale, orders usually include:

who chooses the agent and sale method;

the listing price and the minimum acceptable price, or a process for price adjustments;

who lives in the property until settlement and on what conditions;

who pays the bills, insurance, and repairs until sold;

what happens to the sale proceeds at settlement, including paying out the mortgage, tax or other debts, and how the balance is to be held or distributed.

These steps aim to avoid disputes and protect both parties' interests.

Common FAQ

Can the Court delay a sale for the children's sake?

Sometimes. If the numbers work and it remains fair, the Court can permit a deferred sale. You will usually need clear timelines and affordability.

Can I stop my ex-partner from selling below market value?

Yes. If there's a risk of a fire sale or a secret deal, the Court can make urgent interim orders to preserve the asset pool and prevent dissipation of assets.

What if the market drops?

Market changes may affect both sides. Orders may allow review and a change of strategy

if the home doesn’t sell for some time.

Do I need to file for divorce first?

No. Property settlement can be done any time after separation. Married couples must commence proceedings within 12 months of divorce. De facto couples usually have two years from date of separation.

In summary

The Court may order sale if fairness requires it, but many couples avoid this with buy-out, asset swap, or deferred sales agreements;

Children’s needs, affordability, and fairness are key factors;

If someone refuses to cooperate, the sale can still go ahead with Court orders;

Early advice and clear information about valuations and refinance options make better outcomes more likely.

Get help from a family lawyer

If you’re worried about being forced to sell the family home after separating, get legal advice as early as possible. Having a plan and good guidance from an experienced family lawyer helps you feel more in control and protects your interests.

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.