



Dealing with overseas assets in property settlement

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In today's globalised world, we are more connected with other countries than ever before. We are able to trade internationally with just the click of a button, resulting in many Australians owning foreign assets and investments. This blog will look at how overseas property is treated during the course of a [property settlement in Australia](#) after separation.

There are a number of factors to consider, including:

What is [property in a family law property settlement](#);

How overseas property is treated;

Which country is best to pursue your property settlement (Australia or the country where property is held); and

The enforceability of Australian Court Orders overseas.

What is “property” in a family law property settlement?

The Family Law Act 1975 ("**the Act**") outlines the process for how assets and liabilities are divided between the parties after separation. Many people who have gone through a property settlement or know someone who has may talk about the 'four-step process'. You can read more about what is considered when going through a property settlement in our earlier blog, [“How does the Family Court determine property settlement matters?”](#).

The first of the four steps is to identify the property pool, which is made up of assets, liabilities, and [superannuation](#) owned by the parties. The Act provides the following definition of 'property':

in relation to the parties to a marriage or either of them – means property to which those parties are, or that party is, as the case may be, entitled, whether in possession or reversion; or

in relation to the parties to a de facto relationship or either of them – means property to which those parties are, or that party is, as the case may be, entitled, whether in possession or reversion.

The broad nature of this definition is intended to cast a wide net over any property of value owned by the parties, such as real estate, shares, cars, jewellery, savings and furniture.

How overseas property is treated

In general, overseas assets are included in the property pool available for division between you and your former partner and are considered part of the property settlement.

Duty of disclosure applies to overseas property

To identify and value the property pool effectively, you both must disclose any asset, liability, or superannuation that you have an interest in – whether that interest is held jointly, individually, or via corporate entities or trusts. This includes interests that exist in Australia and/or overseas.

Any party to a property settlement must disclose all relevant information and documents relating to their financial position. This is known as the '[duty of disclosure](#)'. It is important that you disclose all property, including overseas property **and/or** interests. Failing to do so may have serious consequences. It may also result in any agreement you have reached being set aside in the future.

How is overseas property valued?

Like property held in Australia, any overseas property will need to be valued for the purpose of the property settlement. You and your former partner may agree on the property's value, or if you cannot reach agreement, you may need to obtain a valuation from an independent expert.

There can be complexities with appointing valuers internationally. This varies on the geographical location, whether the country holding the asset is proficient in the English language and the availability of qualified valuers in the overseas location.

Overseas superannuation/retirement fund interests

If you hold an interest in an overseas superannuation or similar retirement fund, this property may need to be dealt with in the relevant country. They are generally not considered superannuation for the purposes of a family law property settlement in Australia.

In Australia, superannuation interests can be divided between the parties of a property settlement by applying to the court for Orders. However, an overseas [superannuation interest may not be splitable](#) or transferrable to another person.

The Court has a range of options in the orders it may make with all international property, including superannuation/pension entitlements held elsewhere.

The case law and the Court's approach to this can be complex. If your former partner has superannuation (or similar) overseas, you should seek legal advice as to any entitlement you may have.

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When assets are held overseas, which country is best to pursue your property settlement

Before commencing your property settlement in Australia, you should consider the extent of the assets held overseas and where you and your former partner reside. For example, if the majority of your matrimonial assets are held in another country, it may be more appropriate to conduct a property settlement in that country.

There may also be advantages or disadvantages to your property settlement being heard in Australia or elsewhere. It may be possible that one jurisdiction may lead to a more favourable outcome in your matter than others.

If you hold assets in Australia and overseas, it is important that you obtain family law advice both in Australia and in the country where the assets are located.

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The enforceability of Australian Court Orders overseas

Enforcement of an Australian Court Order (including the issuing of [subpoena](#)) regarding an overseas asset is a complicated area for the courts to navigate.

Australian Courts can make orders about overseas assets and take them into account as part of your property settlement. However, the Orders are not automatically enforceable in a foreign jurisdiction. Some countries may not recognise and implement an order made by an Australian Court.

An Australian Court can make orders which require you to deal with an overseas asset in a certain way, but it cannot directly compel or secure the outcome themselves.

It is critical that you seek legal advice from a family lawyer in the country where the property is held. This is to ascertain whether any Australian Court Orders will be enforceable in that country. The lawyer may also advise that it is simpler and more cost-effective to obtain a property settlement in that country too.

How can a family lawyer help?

If you have recently separated and you or your former partner hold property overseas, you should seek legal advice as soon as you can.

Our experienced team can help answer any questions you might have about how overseas property might be factored into your property settlement.

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.