



# Time limits for family law property settlement

Date: Tuesday February 16, 2021

Time limits apply in family law proceedings for property settlement and spousal maintenance matters. If you separate from your partner (whether married or in a de facto relationship), you will need to **commence** your property settlement proceedings within the specified time limits.

## Time limits for married couples

Under the *Family Law Act*, the time limit to commence property proceedings for parties to a marriage is 12 months from the date on which [the divorce order becomes final](#).

## Time limits for de facto partners

For parties to a de facto relationship, the *Family Law Act* provides a time limit to commence proceedings for property or maintenance matters. This time limit is 24 months following [the end of the de facto relationship](#).

For parties to a de facto relationship in Western Australia, the *Family Court Act* provides the time limit to commence proceedings for property or maintenance matters. This time limit is also 24 months following the end of the de facto relationship.

## Can I still commence proceedings if I miss the time limit?

In short, yes.

However, applications filed out of time are subject to judicial discretion of the Family Court for acceptance. Such applications can be financially costly, stressful and litigious.

The Family Court retains ultimate discretion to accept or reject an application filed out of time.

An applicant seeking to file an application outside the prescribed statutory period of 12 months for married parties or 2 years for parties to a de facto relationship, is required to demonstrate to the Court that the applicant, or a child to the marriage, will suffer hardship if the application is rejected.

Hardship is not defined in the *Family Law Act* or the *Family Court Act*. The Court determines the merits of each application and whether hardship exists, on a case-by-case basis.

If the Court does find the applicant will suffer hardship if their application does not proceed, the Court will also consider other circumstances of the parties, including but not limited to:

the reasons for the delay;

the prospects of success of the application;

the prospective legal costs if the proceedings are permitted to proceed; and

what prejudice, if any, would be caused to the other party if the application was permitted to proceed.

## What is the last day I can commence property settlement proceedings?

It is critical that if you are considering filing an application for property matters, you have correctly diarised your key dates, including the final date you can file an application with the Court.

## Critical dates for married couples

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## Critical dates for married couples

For a divorce order that became final on, for example, 1 January 2021, the key dates would be as follows:

|  |                |
|--|----------------|
| Date divorce order becomes final                         | 1 January 2021 |
| Commencement of 12-month time limitation period          | 2 January 2021 |
| End of 12-month time limitation period                   | 2 January 2022 |
| Last day to file an application for property proceedings | 1 January 2022 |

## Critical dates for de facto couples

For parties to a de facto relationship that ended on, for example, 1 January 2021, the key dates would be:

|  |                |
|--|----------------|
| End of de facto relationship                             | 1 January 2021 |
| Commencement of 24-month time limitation period          | 2 January 2021 |
| End of 24-month time limitation period                   | 2 January 2023 |
| Last day to file an application for property proceedings | 1 January 2023 |

## Get help from a family lawyer

If you have recently separated from your partner and you require assistance with understanding your rights with respect to property matters, we recommend you seek legal advice from an experienced family lawyer as early as possible.

You may find our blog, [“Top 10 things to consider after separating from your partner”](#), useful.

If you think you have missed the deadline to file an application for property proceedings, we recommend you immediately contact the team at Meillon & Bright Legal. Our team of family lawyers have experience preparing and drafting out-of-time applications and defending applications made out of time.

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*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.*