



Can property Consent Orders be set aside by the Court?

Date: Tuesday October 11, 2022

If separated parties have reached agreement regarding their property settlement, this is often [formalised by filing an application for Consent Orders with the Family Court](#). Once the application is filed, a judicial officer will review it, and if satisfied, the Orders will be sealed and made into Final Orders. In this blog, we explore the circumstances where those Consent Orders can be set aside by the Court.

Can the Final Orders be set aside?

The Family Court is generally reluctant to reopen [property settlement](#) proceedings once they have been finalised. One of the main objectives of Final Orders is to determine and end the financial relationship between parties to a marriage or a de facto relationship and avoid litigation between these parties.

The Court will permit Final Orders to be set aside in limited circumstances.

These include if the parties to the Orders agree for the Final Orders to be set aside.

The Court will generally permit Final Orders to be set aside by Consent to avoid unintended economic hardship and to avoid unintended consequences for parties. For example, the Court has been willing to set aside final property orders in circumstances where parties have subsequently reconciled their relationship.

Under what circumstances might the Court consider setting aside Final Orders?

If both parties do not agree to set aside the Final Orders, and one party seeks to have the Final Orders set aside, the Court will

consider the following limited circumstances:

Miscarriage of Justice: there has been a miscarriage of justice by reason of fraud, duress, suppression of evidence (including failure to disclose relevant information), the giving of false evidence or any other circumstance;

Impracticality: circumstances have arisen since the Orders were made that it is impracticable for the orders to be carried out or part of the order to be carried out;

Default: a person has defaulted in carrying out an obligation under the Order and as a result of the default it is just and equitable to set aside or vary the Order;

Care for Children: circumstances have arisen since the Orders were made, which are of an exceptional nature relating to the care, welfare and development of a child of the marriage/ de facto relationship, where the applicant has caring responsibility for the child and the applicant will suffer hardship if the Orders are not varied or set aside; or

Proceeds of crime order: when such an Order has been made covering property of the parties to the marriage/de facto relationship.

Below, we look at these circumstances in a little more detail.

1. Miscarriage of Justice

Miscarriage of justice can take on many forms and can be as a result of fraud, duress, provision of false evidence, or the most common situation where one party to the proceedings has [failed to disclose material information or documents](#).

The Court will not generally set aside final property Orders if an intentional failure to disclose the value of an asset or material information would not have changed the outcome of the Court's original decision. For example, the Court is unlikely to reopen final property Orders in circumstances where a party failed to disclose funds held in a bank account if the end result in so far as the terms of the Final Orders would have been the same.

2. Impracticality

If circumstances have arisen since the making of Final Orders which result in it being impracticable for the Order to be carried, the Court may exercise its discretionary powers to vary or set aside the Orders.

The standard for "impracticability" is more than simply being unjust or difficult for the Orders to be implemented.

This factor may be relevant in circumstances where after Final Orders were made, a party subsequently loses their job and is therefore unable to comply with an Order requiring payment to the other party or where additional time is required.

3. Default

If one party has defaulted in carrying out the obligation/s imposed by Final Orders, the Court may vary or set aside those Orders if it considers it is just and equitable in order to rectify the default. This is done to ensure the defaulting party does not benefit from their failure to comply with Orders or their deliberate wrongdoing.

4. Care and Welfare for Children

The Court may vary or set aside Orders if it is satisfied a child of the marriage or one of the parties who has responsibility to care for a child (of the marriage) will suffer hardship. In order to satisfy this criterion, a party must satisfy the Court that the change in circumstance/s is of an exceptional nature.

The Court has wide discretion in relation to this criteria. Examples of “exceptional circumstances” include:

Circumstances where a child suffers a chronic illness after Final Orders were made;

One party continuously fails to [pay child support](#).

5. Proceeds of crime order

The Court may vary or set aside Orders where a proceeds of crime order has been made against a party to the marriage or a proceeds of crime order has been made regarding property of the parties to the marriage.

Get help from a family lawyer

If you have Final Consent Orders for property matters and are unsure they should continue to apply or would like to discuss your options or prospects of changing or [varying Final Orders](#), Meillon & Bright's team of experienced family lawyers can assist you with considering your rights and entitlements with your Final Orders.

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.