



Risks of buying a new property before finalising your Family Law property settlement

If you've recently separated and wish to move on with your financial matters, it's important to close off on your previous property affairs with your ex-partner first. Whilst it might be tempting to purchase real estate or other assets, particularly if you find a 'great buy', there can be issues if you do so before finalising property matters with your ex-partner.

What are the issues?

The *Family Law Act 1975* (Cth) requires parties to make genuine efforts to resolve disputes and to follow pre-action procedures before commencing Court proceedings. Part of this process includes a duty of disclosure – parties must exchange information and documents (whether or not these are known to both parties) that are relevant to an issue in the case.

The disclosure obligations exist from the beginning of the matter and continue until the case is resolved. This means that a party must disclose new information when certain circumstances change or further documents that come to a person's attention. Disclosure is important so that an understanding of the parties' asset pool can be ascertained, and the parties properly advised of their legal rights and entitlements.

The acquisition of a new property will certainly fall within the disclosure requirements whether you consider your ex-partner should be privy to the details. Consequently, if you purchase property, either alone or with a new partner, this fact will need to be disclosed and the property will become part of the asset pool. Disclosure will mean providing the address, purchase price and details of any loan or mortgage over the property, and of course details of any third party who is registered on the title. This is unlikely to be ideal however failure to disclose the new acquisition will be considered non-compliance with your obligations and may attract serious penalties.

Whilst the Court has a discretionary role in family law matters and will take into consideration the circumstances and financial contributions towards the new asset, it is safer to be certain that the acquisition of new property does not adversely affect your property settlement rights. Consequently, it is worth considering finalising your property settlement before jumping into the property market again.

Settling your financial affairs out of Court

Even if you and your ex-partner agree on how your property should be divided it is important to formalise your negotiations through a financial agreement or by filing consent orders in the Court.

A financial agreement (often referred to as a binding financial agreement) formalises how property is to be divided. The agreement may include the transfer or sale of real estate or other assets, the distribution of proceeds from the sale, the paying out and closing of credit cards or other loan accounts, the transfer of liabilities between the parties and the ongoing payment towards certain expenses.



When negotiating the agreement, parties must be honest in their dealings and give proper disclosure of their assets and financial resources.

Each party must obtain independent legal advice and, if prepared in accordance with the statutory requirements, financial agreements can be a less formal and cost-effective solution to dividing property. The agreement will be binding on the parties with the same force as any other contract.

Alternatively, separating couples may be advised to have their agreement endorsed by the Court through consent orders. This is a more formal process because the Court will need to approve the proposed orders.

An application for consent orders must include full financial disclosure by both parties and the Court will only approve the orders if, on the information provided, it is just and equitable to do so. Because of the Court's involvement in consenting to the orders, in certain circumstances, they can provide greater finality than a financial agreement.

Time limits

Separating parties should be aware of the time limits applicable in commencing proceedings under the *Family Law Act 1975* (Cth) for a financial property settlement. The grant of a divorce triggers a 12-month limitation period within which to commence proceedings for property settlement or spousal maintenance. For de facto partners, proceedings must be commenced within 2 years of separation.

Whilst the Court may grant leave to apply out of the statutory time limits for extenuating circumstances, parties should endeavour to resolve their financial affairs without delay.

Conclusion

Full financial disclosure is essential to enable a lawyer to properly advise a party on his or her rights or a Court to ascertain the property pool if proceedings are commenced. Disclosure obligations must be followed even if the parties settle their financial affairs without going to Court, and the parties have an ongoing obligation to disclose matters until their property settlement is finalised. The decision to resist purchasing a significant asset before you have finalised your property settlement is likely a wise choice.

At Bateman Battersby we have several experienced Lawyers who specialise in Family Law matters. If you need help sorting out the confusion about who gets what when a marriage breaks up or if you wish to discuss any of the matters addressed above, please feel free to contact [Oliver Hagen](mailto:Oliver.Hagen@batemanbattersby.com.au) or [Ken Gray](mailto:Ken.Gray@batemanbattersby.com.au) on (02) 4731 5899 or email us at familylaw@batemanbattersby.com.au.