

Article

FAMILY LAW



Consent Orders

By Joanne Cliff

If you and your former partner have reached an agreement on parenting and/or property division, then there is a process available where you can obtain consent Court orders without ever having to go to Court.

A consent order is a written agreement that puts in place arrangements between you and your former partner/spouse. The agreement becomes a legally binding court order that can be enforced by the Family Court. Consent orders allow the separation to be finalised quickly and can significantly reduce the cost for both parties.

If you can reach an agreement, then a consent order can cover:

- how your property will be split between you;
- if spousal maintenance will be paid and if so, how much; and
- the caring arrangements for your children.

Consent orders can be made if court proceedings have been issued and a negotiated settlement has been reached. However, most importantly, if proceedings have

not yet commenced, you can still ask the Court to make consent orders and avoid the time and costs associated with going to Court. The key advantages of this are:

1. the orders are enforceable against the other party if any of the arrangements are breached;
2. it is a much cheaper option than Court proceedings; and
3. a Court order is evidence of your agreement and can be produced to Revenue SA to enable you to avoid stamp duty and CGT when transferring property and shares from one party to the other (a Binding Financial Agreement will also provide the same relief).

Where proceedings have not commenced, an application for consent orders and proposed consent orders have to be filed in the Family Court of Australia. While a doityourself kit is available to download from the Family Court of Australia website, it is advisable to seek legal advice from a family lawyer. The drawing of orders can be complex, and it is important

you clearly understand the effect of the orders you seek, to ensure any unnecessary consequences are avoided.

Once the documents are filed, a Registrar of the Family Court will review the documents. The Registrar must be satisfied that property division is just and equitable and that any parenting orders are in the best interests of the child(ren). If the Registrar is not satisfied, they will seek further explanation from the parties.

Consent orders cannot be obtained through this process when the arrangements include:

- child maintenance for children covered by the *Child Support Act*;
- declarations about the existence of a de facto relationship;
- certain medical procedures; and/or
- parenting orders in favour of a person who is not a parent, grandparent or another relative.

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In these instances, Court proceedings will have to be issued.

Drafting consent orders

When drafting the agreement, there are some key matters you must address to satisfy the Registrar of the Family Court as follows:

Parenting order requirements

In relation to parenting matters, it is important to provide information that covers:

1. who the child(ren) lives with;
2. who the child(ren) spends times with and when;
3. arrangements during school holidays; and
4. arrangements for special occasions such as Christmas, Easter, the child(ren)'s birthday, Mother's Day and Father's Day.

Property consent order application requirements

In relation to the division of property, you must include information that covers:

1. time limits, such as when the family home may be sold;
2. what assets the parties will retain;
3. who will be responsible for paying liabilities; and
4. details as to any superannuation split that may have been agreed between the parties.

If there is to be a splitting order - which means that money from one partner/spouse's superannuation fund is paid into the other partner/spouse's fund - then the consent of the superannuation fund Trustee from which the money will be transferred first has to be obtained. This must be done before consent orders are filed.

The application requires the parties to set out in some detail all of their assets such as real estate, motor vehicles, bank savings, superannuation and shares, along with any liabilities such as mortgages and loans. Parties will also be required to submit information relating to income, parenting and homemaking responsibilities and financial and non-financial contributions that have been made to the accumulation of assets.

In relation to real estate, the parties should agree on the value of the matrimonial property before applying for consent orders. This value could be based on the ValuerGeneral's value of the property - found on rates notices - or from appraisals obtained from real estate agents.

Some supporting documentation for the aforementioned must be filed with the application.

A failure to address any of the aforementioned matters may result in the Registrar rejecting the initial agreement, which will increase the time and cost associated with your separation.

Filing consent orders

It is important to understand that consent orders must be filed within 12 months of any divorce order or two years of the breakdown of a de facto relationship. If you are married and separated but have not divorced, then there is no time limit. However, it is preferable for property division to take place promptly because there needs to be a valuation of the assets at the time of separation.

The decision

If you have decided to separate and can reach an amicable agreement regarding the division of your assets, applying for a consent order is a sensible decision that will reduce the costs that are incurred by proceeding to Court. If you decide this is a process you want to undertake, seek advice and take the time required to make informed decisions based on your set of circumstances.

For more information speak to our family lawyer, Joanne Cliff, and ask about our fixed costs for preparation of these documents.



MORE INFO

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