

What is the difference between Divorce and Property/Financial Settlement?

Divorce and Financial/Property Settlement are two different and separate Family Law matters, but they are commonly confused as one single matter.

Financial/Property settlement (how your property is divided) can happen at any time from the date of separation until 1 year after a divorce for married couples or 2 years from date of separation for de facto couples.

A Consent order is an agreement between the parties that is approved by the court and then becomes a court order. This can be a Property Settlement Consent order and/or a Parenting Consent order.

Divorce can be applied for after 12 months of separation. Children and property issues do not need to be finalised at the time a divorce application is made.

Once your divorce becomes final, you and your ex have a time limit of 12 months to apply for a property settlement. It is therefore advisable, if possible, to finalise your property settlement before applying for a divorce, as you are not impacted by any time limits.

Financial / Property Settlement

Financial Settlement (also referred to as a Property Settlement) is the division of the couple's combined Net Assets (Net Assets are Total Assets such as Real estate, cars etc less liabilities such as mortgages, loans, credit card debts etc).

There is no set formula used to divide your property. No one can tell you exactly how a court would decide on your property settlement, as the court will decide what they believe is just and equitable based on the individual circumstances of your family. However, the Family Law Act 1975 sets out the general principles the court considers when deciding financial disputes after the breakdown of a marriage or relationship.

Financial Settlement involves four main steps:

1. Identify and value the Net Assets (what you own less what you owe);
2. Consider the contributions of both parties, both financial (eg, wages) and non-financial (eg, caring for children and homemaking);
3. Consider the future needs of both parties such as age, health, financial resources, care of children, income earning ability;
4. Agree on a % split of the Net Assets that is "just and equitable".

Financial Settlement consent orders can be lodged with the Family Court as soon after separation as you wish – there is no minimum time limit. However, there is a maximum time limit in which to do property settlements, and these are one year after a Divorce order has been lodged for married couples and 2 years after the date of separation for de facto couples.

Child support and parenting orders are not included in the Financial/Property Settlement.

Divorce

Divorce is an order by a court that officially ends a marriage.

Financial/property settlement, parenting orders & child support are not part of the Divorce application.

The Federal Circuit Court of Australia and the Family Court of Western Australia has the power to grant a divorce under Part VI of the Family Law Act 1975. If you meet the criteria to apply for a divorce in Australia, you can choose to apply for a divorce on your own or jointly with your spouse.

The Family Law Act 1975 has established a no-fault divorce principle in Australian Law – this means that a court does not consider which partner is at fault in the marriage breakdown. The only ground for a divorce is that the marriage broke down (the "why" is not relevant) and there is no reasonable likelihood that the parties will get back together.

You are able to apply for a divorce in Australia if:

- You and your spouse have lived separately or apart for at least 12 months;
- There is no reasonable likelihood that you and your spouse will resume married life;
- Either you or your spouse meet the Australian eligibility tests.

Divide – Simple Financial Separation ("Divide") does not provide legal advice, we are Chartered Accountants.

This is general information only and does not constitute advice which may be relied upon.

Please contact Divide on 07 3367 5380 or via email at moveon@div-ide.com.au to discuss your specific situation.