



legal chat

with Solicitor
MARK TOBIN

FAMILY LAW PROPERTY SETTLEMENT – SOONER RATHER THAN LATER

My advice would be do it sooner rather than later and do it properly. Usually described in legal terminology as an 'adjustment of property interests' between parties to a failed marriage or defacto relationship, when a couple break up often the first question, after the emotional turmoil that usually occurs, is what happens to our property. How the splitting of the 'asset pool' works out usually relates initially to the size of the pool. While in some short relationships parties are inclined just to split what they have and go their own way, often it is more complicated. Not done correctly one party could chase you again in the future for more of the asset pool, after an initial split, so it is important to do it properly the first time which can only be by getting Court Orders. While this might sound daunting at first if there is agreement it can be relatively straight forward, as the orders made will be by consent. I have people come to see me after splitting up years earlier with stories that they thought they could sort it out themselves or thought they had sorted it out, but things have gone wrong. It is not uncommon for one party to go off and squander money, trips overseas, gambling, partying dissipating what would normally be part of the matrimonial asset pool then they show up when things get a little tight and want a split of the remaining assets. Then there are failed business ventures, shops closed, business into liquidation, redundancies taken and long service leave money spent, when it would normally be part of the asset pool. The other side of the coin is when one party does that and the other struggles for years to keep paying an existing mortgage and working hard then finding they have to sell the house having

maintained it, increased the value or in a boom market so worth more money with a lower mortgage debt, the benefit going to the one who has wasted their money. The Court rule is that the relevant date for the value of the asset pool is the date of the hearing. This principle gets used even for mediations and conciliation conferences even if you separated 8 or 10 years earlier, if you were married. One party can find themselves arguing to keep money, assets and superannuation earnt 'post separation' out of the equation, which gets very difficult in the process. Knowing what you are entitled to is important but from that point, get it done and do it properly so it is not only finalised and settled 'once and for all' but there are no further problems in the future that could 'come back to bite you.'

Johnston Tobin Solicitors have the experience to help you work out your property settlement to get the best results for you.



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