

Moving On

What you need to know
about
Separation & Divorce

Julie Hodge The Family Lawyer

How long does a family law settlement take?



How long a family law settlement takes depends on the issues involved and, to an extent, the legal process undertaken. Chapter 3 outlined the various legal issues that commonly arise in family law matters. Also discussed were the other areas of law that may come into play in a separation or divorce.

Of course, there is also the human element which can greatly impact on how long a family law case takes to resolve. I mentioned in Chapter 4 that if domestic violence occurs this can hinder settlement being reached. The way you interact with your former partner during the separation and settlement process can either assist or harm your prospects of a quick and amicable settlement. There are also cases where one party acts uncooperatively or tries to draw out the process.

Family law cases usually fall into one of these three categories:

1. consent settlements;
2. matters requiring a settlement process to reach a resolution; and
3. matters involving court proceedings.

1. Consent settlements

Consent settlements in which the parties have privately resolved their legal issues usually take two to five months to complete. Such cases might involve both parenting and property matters.

The parties may require some negotiation or collaboration between lawyers to resolve minor legal issues or iron out the details of settlement.

The settlement is then formalised through consent orders or a financial agreement and carried into effect. An experienced family lawyer will advise you how to make your settlement 'legal', and what is involved in implementing it.¹

Should I obtain legal advice or assistance?

Many clients obtain legal advice about parenting issues and their property and/or spousal maintenance entitlements before entering into negotiations with their former partner. This may seem a cautious approach to some, but it is a wise move. Backing away from a settlement deal you have already informally agreed to can make it difficult to resolve your matter in the future. Doing so can also cause conflict, resentment, a breakdown in communication and further legal costs.

It is also highly recommended that you seek legal advice as to any proposed or agreed settlement, before taking steps to formalise it. The risks in not doing so include:

- you implement a settlement that is not in your or your children's best interests or is much less than you are entitled to;
- you and your former partner are unaware of all of the legal issues requiring resolution and miss an important issue. If consent orders or a financial agreement are formalised and important issues such as taxation or payment of debts are not covered this can have major financial, taxation and other consequences. Negotiations or court proceedings may then be required causing more legal costs to be incurred; and
- lastly, you may become legally bound to orders or a financial agreement you cannot honour. Contravening court orders or breaching a financial agreement can also have serious consequences and result in further Court proceedings and legal costs.

2. Matters requiring a settlement process to reach a resolution

It may take between four to nine months to finalise cases in which the parenting arrangements and/or property division have not been agreed, and require settlement processes to be completed. These processes may include negotiation, mediation, collaboration, and/or arbitration. Other issues such as spousal maintenance and child support may also be involved. Sometimes complications can cause these cases to take longer to resolve.

Often, as the parties have not been able to resolve their legal issues, it takes some time to strike a deal. Parties may be entrenched in positions or 'sticking to their guns' on certain

¹ Implementation is discussed in this chapter under the heading 'What happens after settlement?'

issues. Sometimes one or both parties have not had the benefit of family law advice and this has hampered their private negotiations.

Expert advice or assistance may also be required from professionals other than family lawyers. This can include advice from a child mental health professional or taxation accountant or valuations of business or property interests being conducted.

Matters taking longer than six months often involve more than one settlement process. Commonly such matters start by way of solicitor-assisted negotiations and end by way of mediation.

Which settlement pathway is best for me?

A family lawyer can advise you as to the recommended settlement pathway and expected timeframes. Rest assured there are many effective settlement methods available. An experienced family lawyer should be skilled at each, adaptable and quick to let you know if another approach should be adopted.

Skilled family lawyers will not leave you stationary on one settlement pathway. If your matter is not progressing as hoped, your family lawyer should be able to recommend another path to move your settlement forward and save you time and money.

Once the process starts, if you are anxious about how long it might take or how much it might cost to finalise your case, seek an update from your lawyer.

3. Matters involving Court proceedings

For contested matters involving Family Law Court proceedings (in either the Federal Circuit or Family Court),² the time frame from filing an application to trial is on average eighteen months but can be several years.

Once your matter has been determined by a Judge, you then have to wait to receive the decision. Australian families have waited twelve months or more after trial to receive a Court decision. Australian Family Law Courts are under pressure due to the volume of families moving through the Court system and other factors.

Court proceedings should generally be considered a last resort. They are costly, time-consuming and can take an enormous personal toll on you, your family and your children. You are rolling the dice in Court proceedings. The outcome may not be what you or even your former partner wanted. In this process, a Judge, who does not know you or your children, makes major life decisions for all you.

² Note that in May 2018 there was an announcement by the Attorney-General of Australia, Christian Porter, that in early 2019, the Family Court and the Federal Circuit Court will be combined into a new Court known as the Federal Circuit and Family Court of Australia ('FCFCA').

For reasons of urgency or complexity, where serious issues are involved or you are unable to reach agreement, the Court system may be the only, or the best, option.

You should feel comforted by the fact that the vast majority of cases never go anywhere near the Courts; for the minority that do, comparatively few reach the stage of trial.

What happens after settlement?

After your matter is settled by either consent orders, a financial agreement or a Court order, the terms of the settlement need to be implemented. In other words, you have to carry the agreement into effect.

For children's matters, this usually involves simply abiding by the orders or agreement in the future.

For property matters, implementation may involve paying settlement monies, transferring assets (property, cars, shares and the like), superannuation splitting and taking steps to exit a financial structure.³ Your lawyer will advise you what is required in implementing your property orders or financial agreement.

For spousal maintenance matters implementation usually involves payment of monies or transfers of assets.

You can then instruct her or him as to what, if any, implementation steps you are happy to take care of yourself. Commonly lawyers attend to all of the implementation steps apart from dividing up personal property and making settlement payments (unless the settlement payment is part of a property transfer/conveyancing).

There may be other administrative steps you need to take after settlement including closing joint bank accounts and cancelling joint insurance policies.

Best Wishes,

Julie Hodge The Family Lawyer



Julie Hodge The Family Lawyer
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³ Exiting a financial structure, such as a family company for example, commonly involves resignations of directorships and transfers of shareholdings.