

## How do I get a Property Settlement Consent Order?

*This information is based on the law as at July 2010. It is intended for the use and benefit of women who contact the Women's Legal Centre (ACT) and is to be read in conjunction with the specific advice given to those women when they contact the Centre.*

### **How do we reach an agreement in relation to property?**

In some cases it is possible to discuss property settlement issues with your former partner and come to an appropriate agreement without the need to see a solicitor. Even if you have reached agreement, it is recommended that you receive some legal advice in relation to what you are entitled to before getting a Court to approve your agreement by way of consent orders.

If you can't reach an agreement, a trained mediator or family dispute resolution practitioner may be able to help. You can get a copy of the Centre's tip sheet on *Family Dispute Resolution* for details on where to go.

You should get legal advice before attending at mediation or family dispute resolution to find out what you are entitled to.

If you cannot agree at all, you may have to get a solicitor to write to your former partner, setting out what you propose. You may get an agreement after the exchange of correspondence between solicitors.

If after getting some initial legal advice, you then decide to do most of the work yourselves, you should still get a solicitor to check your consent order and accompanying documents before filing them in the Court.

### **What documents do I file?**

If you and your ex-partner have reached agreement in relation to your property settlement then you must lodge the following documents at the Family Court Registry:

- An application for consent orders
- the consent orders themselves, as certified
- superannuation information form if you are applying to have superannuation entitlements split or flagged (see below and see the Centre's tip sheet *Property Settlements in the Family Court and the Federal Magistrates Court*)
- a good photocopy of your marriage certificate
- the filing fee – which is currently \$80

You can get a *Do It Yourself Consent Order Kit* from the Family Court or from the website [www.familylawcourts.gov.au](http://www.familylawcourts.gov.au) which sets out the procedure to be followed when filing a consent order at the Court.

You will need to lodge the original and two copies of your application for consent orders, along with two certified copies of the draft consent orders. You must lodge the documents within 90 days of the applicant signing the affidavit on the application.

**What if I am seeking a super splitting order in my consent order?**

The application for consent orders form requires you to state the value of the superannuation interest you wish to have dealt with (see the Centre's tip sheet *Property Settlements in the Family Court and the Federal Magistrates Court*). The trustee of the superannuation fund must be served with a copy of the proposed orders at least 28 days prior to the filing of the application. The trustee then has 28 days in which to object to the making of the orders, as far as they relate to the superannuation interest. However, the trustee can sign a letter of consent dispensing with the 28 day requirement if they are agreeable to that.

**What if I am not seeking a super splitting order in my consent order?**

In these cases you are not required to obtain a valuation of the super interest pursuant to the Family Law Regulations. The Court will, however, require sufficient information about the existence of the super interest to enable it to be satisfied that the orders being applied for are appropriate. This can usually be accomplished by attaching a copy of the most recent superannuation statement to the application, unless the superannuation interest is in the Public Service Scheme or a Military Fund. In these cases you should seek legal advice, as it is best to have them valued. The actual value of the interest could be much greater than that appearing on the statement, as there can be a pension component involved. If you are not seeking a super splitting order, there is no requirement that the super fund be served with a copy of the proposed orders.

**What is the Court's role in cases where there is agreement?**

Just because you and your former partner have come to an agreement about the orders that you want to be made, the Court still has to be satisfied that the orders are 'just and equitable'.

This means, for example, that if you accepted a very low offer from your former partner to settle the matter then the Court may not approve it.

If the Court does approve the orders, it will send you and him/her stamped copies. You should keep these as you may need them for any transfer of property which is going to take place.

### **About the Women's Legal Centre**

The Women's Legal Centre (ACT & Region) Inc. is a community legal centre for women in Canberra and the surrounding area. The Centre is run by women and aims to improve women's access to justice. The Centre offers free, confidential telephone advice Monday to Friday from 9.30am to 12.00 noon, and face to face appointments, when appropriate.

The numbers for legal advice (weekdays 9.30am to 12 noon) are:

Local	6257 4499
Outside Canberra	1800 634 669

The Women's Legal Centre is funded by the Indigenous Justice and Legal Assistance Division, Commonwealth Attorney-General's Department.