



# You don't need to wait 12 months for a family law property settlement

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We often receive enquiries from family law clients who assume they have to wait at least 12 months following separation, to commence their financial and property settlement.

This is not the case.

## The “12 months” confusion relates to divorce, not property settlement

The 12-month time frame is relevant to the period of time the Court requires parties to a marriage to be separated before the court will formally recognise the end of their marriage. An application for divorce can only be made once parties have been separated for a minimum period of 12 months from the date of separation. If the court is satisfied the legal requirements are met, they will grant a divorce order.

Even though you cannot finalise your divorce within 12 months of separation, on and from the date of separation, parties can negotiate and formalise arrangements for:

- property and financial settlement;
- spousal maintenance; and
- parenting arrangements for the children.

## How are valuations of property treated in family law?

There is a common misconception that "a line in the sand is drawn" from the date of separation, which compels parties (and their advisors) to treat the parties' assets and their value as at the date of separation.

This is also not the case.

The value of the net asset pool is highly relevant to the timing of negotiations for a financial and property settlement. The value of the asset pool is, in most cases, taken at the date of the settlement between the parties and **not** the date of separation.

The Court must identify and value the property of the parties as at the current date and will consider contributions (financial and non-financial, such as homemaker or primary carer of children) from the commencement of the relationship until the current date.

## **Delays in property settlement can impact the value of the asset pool**

A delay in the timing to finalise a property settlement can have a material impact on the value of the asset pool. If negotiations are delayed, any increase or decrease to real (for example, the family home), superannuation and other assets and investments may significantly alter the value of the pool and the available property to be distributed between the parties.

It goes without saying, the longer parties wait after separation, the more difficult the task of property settlement becomes.

This is largely due to the nature of the parties' contributions, which will change post-separation. During the relationship, each party's contributions were likely made for a common purpose, but upon separation, parties go their own way and contributing towards those same common purposes will have ended.

[Recently separated spouses should seek expert family law advice immediately after separation](#) to ensure they are aware of their rights and entitlements under the relevant Family Law legislation.

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*The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.*