



Can I change my final property consent orders?

So you have reached a final **property settlement** agreement with your ex which was formalised by way of Court Orders. One party now seeks to change the agreement. Can they do this?

There are very limited circumstances in which changes can be made to final property settlement orders.

What are final property consent orders?

Final property consent orders are any orders that have been made by the **Federal Circuit and Family Court of Australia** in relation to your financial matters with the

agreement of both parties. When final orders are made by a Court, the court deems that such orders should be final and bring an end to any litigation.

Property settlement orders once made can be set aside or changed by the parties provided that all parties affected by the order consent to the same. However even in the absence of consent, there are certain circumstances set out under the Family Law Act 1975 (Cth) where you can request that the Court vary or set aside previous property orders.

In order for the same to occur, the Court must be satisfied of one of the following:

1. That there has been a **“miscarriage of justice”** by reason of fraud, duress, suppression of evidence, the giving of false evidence or any other circumstance;
2. In the circumstances that have arisen since the making of the final orders, it is impracticable for the orders (or part of the order) to be carried out;
3. A person has defaulted in carrying out an obligation imposed on them by the final order;
4. Circumstances of an exceptional nature relating to the care, welfare and development of a child of the marriage have arisen since the making of the final order;
5. A proceeds of crime order has been made covering property of the parties to the relationship.

The most common ground used to set aside or vary property settlement orders is that there has been a “miscarriage of justice”.

What does “miscarriage of justice” mean?

You will need to establish that there has been fraud, duress, suppression of evidence, the giving of false evidence or another circumstance by which the orders should be set aside.

Fraud generally means that there was a conscious wrongdoing or deceit by one party. Duress will often occur in circumstances when one party is under a high level of pressure to sign the orders, to the extent that the pressure goes beyond what the law is prepared to accept as legitimate. Suppression of evidence will be established if there has been a deliberate failure by one party to disclose relevant information.

There is extensive case law centred upon the above and if you are concerned that there was fraud, duress, suppression of evidence or false evidence relied upon in the making of your property settlement orders, you should seek urgent advice from an experienced family lawyer.

If one of the grounds can be established, the Court will then need to be satisfied that the ground amounts to a miscarriage of justice. It will not be established in every instance. For example, the oversight of one party in not disclosing an asset such a bank account or shares may not amount to a miscarriage of justice if the bank account had no money in it or the shares had a nominal value. Every case will be decided upon the facts. What may amount to a miscarriage of justice in one case may not amount to a miscarriage of justice in another case.

If the Court is satisfied that there was a miscarriage of justice, it must then decide whether they should exercise its discretion to vary or set aside the orders or whether they should make another order entirely.

This area of law is complex and again, it will be determined on a case by case basis. There is no one answer and therefore it is vital you get tailored advice from an [experienced family law firm](#).

How can Andersons help?

If you have concerns about your property settlement orders being changed by your ex or require further advice about whether you can apply to the Court to set aside or vary your Court order, get in contact with our Family Law Partner [Stefanie Wheare](#) for an appointment today.