

## FINANCIAL FINALITY

April, 2010

From time to time, a spouse will propose to the Court that a property settlement not be finalised immediately, but that it be delayed. This delay could be suggested for various reasons, usually commercial reasons. The difficulty with this suggestion is that it is contrary to the legal requirements for financial finality.

In a recent case, the Husband wanted to finalise the property settlement after the youngest child turned 18.

### **The Facts:**

- The Wife was aged 46 and the Husband, 48. They were married for 22 years and had 3 children, aged 16, 12 and 10.
- The child aged 16 had developmental problems and the 12 year old child was diagnosed with a depressive illness.
- The two eldest children did not have a relationship with the Husband, however the 9 year old child spent time with the Husband. All children were in the primary care of the Wife.
- The Wife earned \$35,000 a year. The Husband earned a package of \$150,000 a year.
- The Wife wanted the Husband to transfer the house to her.
- The Husband wanted the Wife and children to remain in the home until the youngest child (aged 9) turned 18, or finished high school. The Husband proposed to pay the mortgage, rates and health insurance during this time and in the meantime for some shares to be sold to reduce the mortgage.
- The Husband proposed that once the youngest child turned 18, the house be sold and the proceeds divided equally.
- The Wife said that for her to be "enmeshed" with the Husband for the next 8 years would impact on her mental health.
- The Family Report writer suggested that the Husband seek psychological help to assist with his anger.
- **Court Found:**
- Making Orders that reflected the Husband's proposal would not be in accordance with the obligation on the Court to finally determine the parties' financial relationship.
- To delay property settlement would lead to further litigation if the Husband failed to make mortgage or other repayments and would have a negative impact on the Wife.
- **Court Order:**
- The house to be transferred to the Wife and the Wife receive 67% of the net property and the Husband receive 33%.