

# AN INFORMAL PROPERTY SETTLEMENT- CAN THE COURT INTERFERE?

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For a Property Settlement Agreement to be legally binding, it needs to be documented as either a Consent Order or a Financial Agreement. The Court recently had to consider in a case whether an agreed property settlement that was not formalised by the parties, was a ground to dismiss an application for a Property Settlement.

## The Facts

- The couple separated after 16 years of marriage. They had two children. At separation they agreed to sell the former matrimonial home and split the net sale proceeds equally. The Agreement was informal and no Consent Order or Financial Agreement was entered into.
- 2 years later, the wife filed an application for Property Settlement in Court seeking a payment of \$120,000 from the husband and an equal split of his superannuation. The net result to be 50%.
- The Husband claimed that they had reached an informal agreement for Property Settlement at the time of separation and as it was “just and equitable”, the Court should not interfere.
- At the time of separation and at the time of the Court application the husband’s financial position was superior to the wife. He had also accumulated superannuation double that of the wife’s.

## The Court Found

- The Court found that despite the informal agreement, it would be unjust to not proceed with a property application.
- The Court found the contribution of the parties to be equal at separation, but gave the husband a 2% adjustment for his ‘financial contributions’ post separation. For ‘future needs’ factors, the Court awarded the wife a 5% adjustment due to the income disparity of the parties.

## Court Order:

- The non-superannuation property be divided 53% to the Wife, resulting in a payment to the Wife of \$121,640, and

The superannuation pool was divided equally.

