

DON'T DELAY YOUR PROPERTY SETTLEMENT

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As far as the real estate industry is concerned, the COVID-19 recession seems like a distant memory. While some aspects of the economy are struggling to recover from the pandemic, house prices are going through the roof.

This is great news if you're selling, and if you and your partner split up during COVID, now is the time to organise your property settlement.

It's vital during any separation that you don't delay your property settlement. In a recent case, a husband and wife had delayed their property settlement until six years after separation.

The judge was critical of both of them and said the lapse of time since separation had increased the complexity of resolving an otherwise straightforward matter.

The wife had the advantage of remaining in the home, but she had also run up substantial debts.

The husband on the other hand had made use of assets in his sole control and spent approximately \$150,000 on expenses which included a luxury holiday for him and his new partner, school fees and legal expenses.

The husband had also "gifted" their eldest son \$200,000 to put towards buying a unit in the son's name. The son had lived with the husband since the separation and the husband said it was "unreasonable" of the court to include their son's unit in the property pool available for distribution.

The judge noted that neither the husband or the wife called evidence from the son, which was an "omission of a basic and fundamental step".

The court did not take into account the current value of the unit but did take into account the \$200,000 "gift" as representing the party's interest in the unit.

The court also took into account \$100,000 of the \$150,000 spent by the husband and noted that it largely offset any percentage adjustment the husband would have otherwise been reasonably entitled to under the "future needs" percentage component.

The wife was also allowed to include the debt she had accrued post-separation.

The court determined that the assets be split in the husband's favour 55 per cent, to 45 per cent which was mainly due to the husband having made a more significant "initial contribution".

If so much time had not elapsed, the husband may have received a greater percentage adjustment.

When valuing real estate, either the matrimonial home or an investment property, it's important not to jump straight into getting a

valuation from a registered valuer.

This means the value of the property is all but set in stone. And if one person believes the value is incorrect, or has changed – as property prices have changed post-COVID – it can make ongoing negotiations difficult.

Ideally you should look at trying to negotiate an estimate of what the property may be worth before locking in the value, by obtaining a valuation. By negotiating, it is up to the parties to decide what the property is worth and if an agreement is reached, the court will rarely interfere with that.

It's also a good plan to get an appraisal by a real estate agent, or several real estate agents, which will give you an idea of the average worth of the property.

Courts are always in favour of property settlements being done and dusted as a soon as possible. And in the current real estate market, it can't hurt to get your property settlement sorted.