



Caldwell
Martin
Cox

Solicitors

FACT SHEET

Property Series –
Selling or transferring the
matrimonial real estate



Don't take any risks with a sale after a relationship breakdown.

If your relationship has ended and you have agreed to sell your home or investment property you don't need to see a solicitor right? **WRONG!!** In fact there is no more important time to get some help and advice. Agreeing to sell the home is often the easy part. What will happen to the sale money? Can you buy a new property? How do you know what is fair when dividing up the sale proceeds? Can you be sure that the "agreement" you have reached is honoured and what if it isn't? Are you able to structure the sale to reduce CGT? How do you make sure that you don't end up in court? What if you can't agree on the sale price?

At CMC we have had clients who "agreed" on a sale and divided up their money and "moved on". In one instance the wife commenced court proceedings 3 years later seeking a share of the husband's new house. He had to pay her to keep his home. In another case our client had "agreed" to sell the home in 6 years when their daughter turned 18. The wife would stay in the home for the 6 years, the husband would pay the mortgage, and then when sold it would be split 50/50. When the time came the wife wanted 75%. We ended up in court and she got 65%.

An informal agreement is worthless and does not prevent a party seeking more at a later date or taking you to court. Even worse - what if you rely upon that agreement and contract to buy a new home only to find that the money you expected to get from your sale doesn't come because the other party changes their mind and the money is locked up until the dispute is resolved. If that happens you might be committed to a purchase that you have no money to complete.

We can formalise your agreement in a way that protects you, avoids court, and might even save you CGT. Don't be frightened or bullied out of getting information and advice. The family law team at CMC can answer these and many other questions for you.

Don't wait until your family home sells before doing something about your family law property settlement

Once their marriage breaks down, many people think that they need to wait for their family home or other investment properties to sell before they can begin their property settlement negotiations. This is not correct and, in fact, it's much better to have at least started negotiations with your former spouse, and possibly even reached agreement, before the sale goes through. And possibly before the property even goes on the market.

The biggest advantage in doing so before selling your home is that the agreement that you reach with your spouse can deal with such things as the way the property is to be offered for sale, which real estate agent is to be appointed, the way in which the sale price is to be decided or whether the property is to be auctioned. Other common issues that arise include things like who is to keep paying the mortgage, rates and insurances until the property sells and whether the person currently living in the home has to keep it in a nice condition so that you achieve the best possible price.

An agreement such as this can also provide you with some certainty as to what share you are to eventually receive at settlement, which may even allow you to buy another home immediately and move straight from one property into the other.

If you wait until the property sells before making any decisions or reaching agreement about how the proceeds of sale are to be divided up, the proceeds will need to be kept in a real estate agent's or law firm's trust account until you do reach agreement. The money will not earn interest and neither of you can move on and buy another property until the property settlement has been concluded. But, worse than that, where will you live while all of this is being sorted out?

Once you and your former spouse have decided that you aren't getting back together, we recommend that you both begin discussing how you intend for your assets and liabilities to be divided. If neither of you is able to refinance and buy the other person out of the property, you may agree to put the house on the market. Seek legal and financial advice before doing so to make sure that this is your best option.

Ninety-five percent of Family Law matters settle through amicable agreement. The best option is to have your agreement put into writing by a solicitor to protect both you and your former spouse, and your future assets.

Saving \$\$\$\$\$ on family law sales or transfers

You should also know that a well-structured family law property settlement BEFORE you sell can save you Capital Gains Tax on the transfer of an investment property and can save on stamp duty when a property is transferred from one party to another **OR to their children.**

Your Family Home - If you and your spouse have separated and one person will be taking over the mortgage and buying out the other person, the home will need to be transferred into that person's name. Purchasers of properties in 'normal' circumstances usually incur stamp duty, but we will be able to assist you in applying for a stamp duty exemption from the Office of State Revenue at the time of the transfer. In one instance we were able to assist a wife and her 2 adult children and son-in-law to "acquire" the family home from her husband. It was valued at \$880,000 and the children were buying in to help her keep it. The stamp duty on the share being transferred should have been \$15,294. None was payable. We even found a way to get around any stamp duty being paid by the son-in-law! A massive saving due to well drafted Orders.

Investment Properties - Many people own investment properties that need to be sold when a relationship ends - often incurring significant CGT liabilities. We saved a client over \$12,000 in CGT again by putting a little thought into the drafting of their settlement Orders. Let us assist you in structuring your settlement in the most tax-effective way possible so that you and your spouse will each walk away with more in your pocket.

Don't be afraid of seeking professional help to streamline the process and make sure things run smoothly. The family law team at CMC can answer any questions you may have about property settlements, or any other family law matters. Give us a call.

About Caldwell Martin Cox

Caldwell Martin Cox is a law firm established for over 50 years in Narellan, Camden, Picton and Tahmoor. Our specialist lawyers advise clients on family law, the purchase and sale of property, criminal and traffic law, litigation and dispute resolution, business law, personal injury matters, commercial law, wills and estates.

We have a team of five family lawyers, including a Law Society Accredited Specialist in Family Law, who operate from all four offices and serve clients across a broad region.

Camden: 02 46553077

Narellan: 02 46478348

Picton: 02 46771292

Tahmoor: 02 46819203

email: familylaw@cmcox.com.au
www.cmcox.com.au

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