



Family Matters

THE NEWSLETTER OF BERRY FAMILY LAW: SPRING 2019



Meet our Managing Partner, James Turnbull

James is our Managing Partner. He came to Berry Family Law in 2007 after practising the first 16 years of his Family Law career in the Brisbane CBD. James became an Accredited Family Law Specialist in 1997 after first commencing work in Family Law in 1989. Within three years of working for the firm under the owner, Peter Berry, James became a Partner of the firm. In 2015, James became the Managing Partner.

In a career in Family Law spanning almost 30 years, there is almost nothing Family Law related that James hasn't done and won. This breadth of experience allows James to provide a sounding board for other lawyers in our team. This team approach in the firm "value adds" to the positive outcomes being reached for our clients.

James has lectured to the legal profession and other groups including mental health professionals, school principals and school administrators about Family Law.

Fundamental to his role as a Family Lawyer is James' ability to listen carefully to clients and from that to distil the best options, tactics and directions and then give calm and pragmatic advice in plain English.

When James is not working, he spends time with his daughter or windsurfing or surfing Victoria's coast.



Berry Family Law

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Ticking Time Limits



Separation from a mid or long term relationship can be daunting. For most people it might be the most stressful thing which has ever occurred in their life. An easy option can be to walk away. However through this difficult period it is important to understand there are time restrictions on applications for financial settlements in Family Law. After separation, you might be entitled to a property settlement or spousal maintenance or both. There are statutory time limits imposed by the *Family Law Act*. These set out when a spouse may file an application for property settlement or spousal maintenance in the Family Court. The time limits are there for a proper reason. This is to ensure that separated spouses can in time have some certainty that their former spouse will not come after them years later.

The *Family Law Act* allows married spouses only 12 months from the date of a Divorce Order by which to file a court application for property settlement or spousal maintenance. For de facto spouses the time limit ends two years after the date of their separation. If the limitation period comes into effect, spouses lose the right to file an application for property settlement. Instead they must then ask the court for permission to file an application for property settlement or for spousal maintenance.

There is generally good news if you are asking or the bad news if the other spouse is asking for this permission. More often than not, the court will provide permission. However, to extract that permission from the court it is necessary to show:-

- a. A proper and reasonable excuse for the delay; and
- b. That hardship will occur to a spouse or child if the leave is not granted.

Of course, seeking permission adds an extra layer of legal cost. Also, as part of the granting of the permission, the applicant might be required to pay the legal costs of the other spouse. The cost of the Application all up may exceed \$10,000. So all is not lost if you are out of time. In a recent decision of the Family Court, a spouse was allowed to apply for financial orders 23 years beyond the expiry time.

There are other options available if you are out of time. If the statutory time limit is already up, leave can be granted if both spouses agree. There is another angle for parties to finalise property settlement and spousal maintenance, even though the limitation period has expired. That is through the mechanism of a Financial Agreement. This is a special contract document prepared pursuant to the *Family Law Act*. It can include provisions in it about property settlement or spousal maintenance, or both. A Financial Agreement is not required to go through the Family Courts. Therefore the statutory time limits do not apply. However, on the flip side, these documents are more complex and therefore usually more expensive than a consent agreement in the Family Courts.

It is important to keep track of the date of your divorce (if you were married) or the date of your separation (if you were in a de facto relationship). You should be careful to know the relevant time limitation that applies. If the limitation period is approaching and you have not commenced or resolved your financial issues, you should seek legal advice immediately.

If you require specific advice about property settlement, your entitlements to property settlement or spousal maintenance or the necessary time limits, you should immediately obtain proper legal advice.

Peter Berry Consultant

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