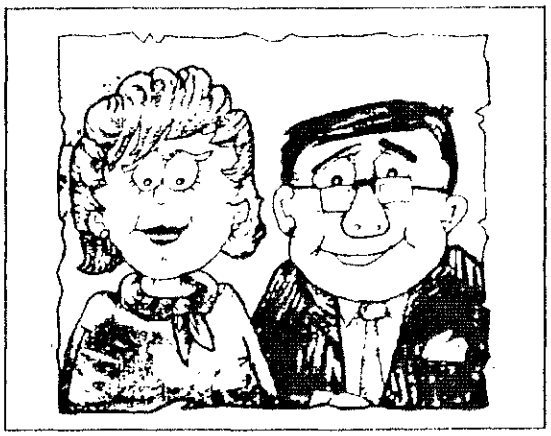
Consent Orders



What are Consent Orders?

Consent Orders are agreements made between separated or divorced couples that have been formalised by the Family or Federal Magistrates Court. These agreements may include the following issues:

- property settlement
- children's issues
- spousal maintenance

When should Consent Orders be sought?

Consent orders may be sought by separated or divorced couples who:

- have agreed on the matters set out above and want to formalise their agreements
- would like to avoid litigation in Court to determine the issues set out above
- are in the course of litigation in Court but have come to an agreement on the matters set out above and wish to avoid further litigation
- may have inadequate financial resources to pursue litigation in the Family or Federal Magistrates Court

Why have Consent Orders?

Consent Orders are a good option because separated or divorced couples:
- may apply for the consent orders themselves without actually having to go to

Court
- may seek free legal assistance from Community Legal Centres to apply for the consent orders
- can be assured that the Consent Order is final and binding because the circumstances in which either party may apply to set aside the Consent Order or change any provisions within the Consent Order are limited.

What are the circumstances where Consent Orders do not apply?

Consent Orders **do not apply** in relation to:

- property settlement between de facto couples (couples who are living or who have lived together, although not married to each other)

  exception: unless there are children in the relationship and property orders sought also relate to those children

- spousal maintenance in relation to a de facto relationship
- child maintenance in relation to children under 18 who were born after 1 October 1989 or whose parents separated after that date. This matter is dealt with by the Child Support Agency Tel: 131 271.

What procedures are involved in obtaining Consent Orders?

1. Agreement on issues such as property settlement, children's issues and spousal maintenance must be achieved between 2 parties by either Mediation or Negotiation. (see Appendix 1)

2. Draft the Minutes of the Consent Orders (see Appendix 2)

3. Complete Form 12A: application for consent orders.

4. Filing the Minutes of the Consent Orders and Form 12A with the Family Court or Federal Magistrates Courts.

   Note that a copy of the Marriage Certificate is required.

   If a copy of the Marriage Certificate is not available, the Court requires a sworn statement in the form of an affidavit, that the parties were married or the Birth Certificates of any children the orders relate to

5. The Court formalises Consent Order

NOTE: Appendix 3 sets out a list of information that may be required when applying for a consent order. This information should be supported by official documentation where possible.

Property Settlements

In order to achieve any agreement on property settlements, parties must first work out (approximately) their entitlements.

This is done by anticipating what may be given to each party if the property settlement is determined through litigation in Court.

Negotiations or any subsequent agreement should then be decided based on the approximate value of the entitlement initially ascertained.

In determining property entitlements between separated or divorced couples, the Court will undertake the following steps:

1. identification of assets

2. valuation of assets

3. division of assets according to contribution and future needs

> s.79(4) and s.75(2) of the Family Law Act set out factors that the Court may consider in making any orders on property entitlements. (see Appendix 4(a),(b))

Generally, the factors considered are:

- financial contributions - may be direct/ indirect in nature towards the children of the marriage and property acquired during marriage

- non-financial contributions – eg. housework, child care

- future needs of both parties - eg state of health, earning capacity of each party

It is important to note that the Court will assess the pool of assets as a whole and NOT on an asset by asset basis.

Common Misconceptions

The following are common misconceptions in relation to property settlements:

- equal division of property regardless of individual circumstances
- the registered proprietor of an asset will have exclusive rights over the asset
- the first person leaving the matrimonial home will be penalised financially
- the division of property is based on whose "fault" it was that the marriage broke up
- the parent residing with the children has the right to occupy the home until the children of the marriage are 1 8 years old.

All these ideas are wrong and are NOT used by courts in determining how the assets are to be divided.

Children's Issues

The Court must consider what is in the child's best interest when deciding to make the order [s.65E of the Family Law Act 1975].

The factors which the Court must consider are listed under s68(F)(2) of the Family Law Act 1975.

How a court determines what is in a child's best interests - s68F(2) of the Family Law Act 1975

Under s 68F(2) of the Family Law Act 1975, the court must consider the following matters in determining what orders are in the child's best interests:

a) any wishes expressed by the child (and any factors such as the child's maturity or level of understanding);

b) the nature of the relationship of the child with each of the child's parents and with other persons;

c) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:

i) either of his/ her parents; or

ii) any other child, or other person with whom he/she has been living

d) the practical difficulty and expense of a child having contact with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;

e) the capacity of each parent, or of any other person, to provide for the needs of the child, including emotional and intellectual needs;

f) the child's maturity, sex and background

g) the need to protect the child from physical or psychological harm caused, or that may be caused by:

i) being subjected or exposed to abuse, ill-treatment, violence or other behaviour or

ii) being directly or indirectly exposed to abuse, ill-treatment, violence or other behaviour that is directed towards, or may affect, another person;

h) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;

i) any family violence involving the child or a member of the child's family;

j) any family violence order that applies to the child or a member of the child's family;

k) whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;

and any other fact or circumstance that the court thinks is relevant. (see Appendix 5)

Spousal Maintenance

Under s.72 of the Family Law Act 1975, a party to a marriage may seek maintenance from the other party :

- to the extent that the other party is reasonably able to do so
- provided the first-mentioned party (the applicant) is unable to support himself/herself adequately

The applicant may seek maintenance through spousal maintenance proceedings.

The Court must take into account matters prescribed under s.75(2) of the Family

Law Act 1975 when making such orders (see Appendix 4.) Generally, these matters relate to the ability of either spouse to support themselves and the reasonableness of a spousal maintenance order.

Furthermore, the Court may order the immediate payment of a periodic sum or other sums as the court considers reasonable, where a spouse appears to be in immediate need of financial assistance.

Such orders may be made even before the conclusion of spousal maintenance proceedings and before any final orders, if any, are made by the court (s 77 of the Family Law Act 1975.)

Residence

- with whom and where the children are to live

Contact

- Sets out when the children spend time with the non-resident parent or persons who are important to the child's life such as their grandparents or relatives.
- For example, a common provision is for the non-resident parent or relative to have contact with the children every weekend and half of the school holidays
- "Contact" includes time with parent or other person directly, by phone or other correspondence
- "Supervised contact" is where there is a significant risk of harm to the children in that person's care
- Contact provisions should be made to adapt to the individual circumstances of the parents. For example, matters to be considered include:
  - -how far apart they live from each other
  - -their work commitments
  - -children's social and sporting commitments

Collection and delivery arrangements

- These arrangements deal with how, when and where the non-resident parent will meet with the children and return them back to the parent the children live with. .
- Contact centres are an option if the parents do not want to meet or speak with each other during the collection and delivery of the children. Contact centres are venues where children may be dropped off and collected safely without either parent having to come into contact with each other.

Other specific issues

- dealing with other areas of parental responsibility
- may be general or specific arrangements in relation to particular areas of children's care

Appendix 1

Pathway to Agreement

MEDIATION

Mediation is a co-operative decision making process in which qualified and impartial mediators assist separated and divorced couples to resolve disagreements such as:

1. Children's issues
   (i) living and contact arrangements and parental responsibilities
   (ii) financial support for children

2. Property settlements

3. Financial matters

Mediation Facilities:

Family Mediation Centres:

Moorabbin: 03 9555 9300

Narre Warren: 03 97056277

Ringwood: 03 9876 0677

Carlton: 03 9650 0048 Freecall: 1800 639 523

Family Court of Australia:

Dandenong: 03 9767 6280

City: 03 9604 2800

When is mediation a good option?

(a) Where parties can agree to communicate with each other

(b) Where there is no element of aggression or violence in a relationship

NEGOTIATION

Negotiation is an alternative option to secure an agreement between separated or divorced couples.

Negotiation is carried out through solicitors.

Some Community Legal Centres provide free legal assistance in this area.

If negotiations fail, matters such as children's issues, property settlements and spousal maintenance will have to be resolved in court.

Appendix 2 - SAMPLE OF MINUTES OF CONSENT ORDERS

FAMILY LAW ACT 1975

MINUTES OF PROPOSED ORDERS BY CONSENT PURSUANT TO ORDER 14 OF THE FAMILY LAW RULES

IN THE FEDERAL MAGISTRATES COURT OF AUSTRALIA

AT DANDENONG **No**

BETWEEN

MELISSA BLOGGS

and

ROBERTO BLOGGS

DATE OF FILING:

IT IS AGREED AS FOLLOWS:

Property Settlement

1.THAT the husband will transfer the former matrimonial home situate at and known as 14 BERLINA STREET, CLAYTON, 3168, being the whole of the land more particularly described in Volume 10001, Folio 422, into the wife's sole name within 30 days of the date of these Orders.

2. THAT the wife will have sole responsibility for the mortgage repayments to SuperGIO House Loan and all costs and outgoings associated with the said home.

3. THAT each party forgo any claim they may have to any superannuation benefits belonging to the other party.

4. THAT the wife will retain the Toyota Camry 1995, Registration Number: XXX 000

5. THAT the husband will retain the Mitsubishi Lancer 1997 (Sedan), Registration Number: YYY 000

6. THAT the husband will retain any interest he may have in the property in Africa

and the wife relinquishes any claims in relation thereto.

7. THAT the HBA health insurance will continue to be paid by the husband which will cover the children, Joe Bloggs and Nina Bloggs until such time as they become financially independent and will also continue to cover Melissa Bloggs until such time as the husband remarries.

8. THAT the wife retains the furniture and appliances currently in the marital home and the furniture given by the husband's parents.

9. Children's Issues

a) That the children of the marriage namely Joe Bloggs born on the 5th Day of September 1989 and Nina Bloggs born on the 6th Day of January 1990, reside with the wife.

b) That the said children will reside with the husband on alternate weekends, and alternate Wednesday nights immediately preceding weekends when they will be residing with the wife.

c) That the said children will reside with the wife and the husband for half of each school holiday period each.

d) That these arrangements are to be flexible and will be changed by mutual agreement between the parties.

e) That the wife will be solely responsible for decisions relating to the children's education.

Spousal Maintenance

10. That the husband will pay the wife a monthly sum of $400 for her living expenses and a once-off sum of $3000 for the cost of a professional secretarial training course which the wife will attend at the Box Hill Institute of TAFE. The monthly payments of $400 shall be paid to the wife until she completes the training course and secure part time employment.

THE COURT NOTES:

THAT the parties intend that these orders will finally determine as far as practicable the financial relationship between the parties to the marriage so as to avoid further proceedings between them.

DATED this

day of 20

. . . . . .

MELISSA BLOGGS
(The Wife)

. . . . . .

Signature of Witness

. . . . . .

Name of Witness

. . . . . .

ROBERTO BLOGGS
(The Husband)

. . . . . .

Signature of Witness

. . . . . .

Name of Witness

Appendix 3: APPLICATION FOR CONSENT ORDERS: REQUIRED INFORMATION

HUSBAND:

Name: . . . . . DOB. . . . . .

Address: . . . . . Phone (H): . . . . . .

. . . . (W): . . . . . .

Occupation. . . . . .

MARRIAGE DETAILS:

Date of Marriage/: . . . . . Place. . . . . .
De facto relationship

Civil/Religious Ceremony: . . . . . .

Date of Separation: . . . . . .

WIFE

Name: . . . . . DOB. . . . . .

Address: . . . . . Phone (H): . . . . . .

. . . . (W): . . . . . .

Occupation. . . . . .

CHILDREN:

Full Name of Child: . . . . . DOB: . . . . . .

1) . . . .

2) . . . .

3) . . . .

4) . . . .

Who do the children reside with?: . . . . . .

Contact Arrangements: . . . . . .

Parental responsibility (day-to-day care/long term): . . . . . .

. . . . . .

PROPERTY DETAILS

Matrimonial Home:

Address: . . . . . .

Volume and Folio Number: . . . . . .

Who resides in matrimonial home: . . . . . .

Whose name appears on the title: . . . . . .

Who paid deposit for home and how much: . . . . . .

Purchased before/during/after marriage: . . . . . .

Mortgagee: . . . . . .

Amount Owing: $. . . . . .

Who paid instalments: . . . . . .

Value of property: when it was purchased . . . . . .

Market Value . . . . . .

CONTENTS IN DISPUTE:

Contents Resale Value

I

Superannuation Funds:

Name of fund	Date of joining	Husband/Wife	Value upon Termination

Insurance Policies:

Insurance Co	Date of insured	Husband/Wife	Value

Savings Accounts:

Bank	Amount	Husband/Wife	Before/During/After

Motor Car

Model/Registration Number/Value of Car . . . . . .

Loans

Amount Owing: . . . . . Owing to whom?: . . . . . .

Purpose of the loan: . . . . . Loan before/during/after marriage? . . . . . .

Who paid the loan?. . . . . .

Interest in Companies or Trusts (Husband / Wife)

Details . . . . . .

Inheritances (Husband / Wife)

Details:.....

Other matrimonial real or personal properties not listed above (Husband / Wife)

Details (item and amount & contribution). . . . . .

FURTHER DETAILS:

Place of Birth

Husband: .....

Wife: .....

Date of Arrival (if not Australian): . . . . . .

Husband:. . . . . .

Wife. . . . . .

Status prior to Marriage (Divorced/Widowed)

Husband: . . . . . .

Spouse: ... .

Financial Details of Husband: (Income)

... .

Financial Details of Wife: (Income)

... .

Current Court Orders: (against husband / wife eg intervention orders)

... .

... .

Appendix 4(a) - MATTERS TAKEN INTO ACCOUNT BY THE COURT IN MAKING PROPERTY SETTLEMENT ORDERS: S. 79(4) FAMILY LA W ACT 1975

The Court shall take into account the following factors in making orders regarding property settlements:

(a) financial contributions
(b) non-financial contributions made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage

(i) to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them,

(ii) includes contributions on the last-mentioned property which is no longer the property of the parties to the marriage or either of them

(c) contributions made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of homemaker or parent

Effect of any proposed order on:

(d) the earning capacity of either party to the marriage

(e) a party to the marriage or a child of the marriage

(f) any child support under the "Child Support (Assessment) Act 1989 "that a party to the marriage has provided, is to provide, or might be liable to provide in the future"

Appendix 4(b) : MATTERS THAT THE COURT SHALL CONSIDER IN RELATION TO SPOUSAL MAINTENANCE PROCEEDINGS: S. 75(2) FAMILY LAW ACT

This section deals with matters the Court shall consider in relation to spousal maintenance. However, under s.79(4)(d), matters under s.75(2), where relevant, shall be considered by the Court in making property settlements.

(a) age and state of health of each party;

(b) income, property and financial resources of each party and the physical and mental capacity of each of them for appropriate gainful employment

(c) which party has care of a child of the marriage under the age of 18 years

(d) commitments of each party necessary to enable each party to support:

(i) himself or herself and

(ii) a child or another person that the party has a duty to maintain

(e) responsibilities of either party to support any other person;

(f) eligibility of either party for a pension, allowance or benefit under:

(i) any law of the Commonwealth, of a State or Territory or of another country; or
(ii) any superannuation fund or scheme within or outside Australia and _
(iii) the rate of such pension, allowance or benefit paid to either party;

(g) a standard of living that in all the circumstances is reasonable;

(h) extent to which payment of maintenance to a party would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;

(i) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party;

(j) duration of the marriage and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration;

(k) the need to protect a party who wishes to continue that party's role as parent

(l) if either party is cohabiting with another person-the financial circumstances relating to the cohabitation;

(m) terms of any order made or proposed to be made about property settlement under s.79

(ma) any child support under the Child Support (Assessment) Act 1989 that a party to the marriage has provided, is to provide, or might be liable to provide in the future, for a child of the marriage

(n) any other circumstances which the court deems necessary to consider.

Services Available

Commonwealth Law Courts – Counselling and Mediation Services

Level 5
305 William Street
Melbourne Vic 3000
Tel: (03) 8600 3888

53-55 Robinson Street
Dandenong Vic 3175
Tel: (03) 9767 6280

Family Mediation Centre

Moorabbin
Tel: (03) 9555 9300
Freecall: 1800 639 523

Narre Warren
Tel: (03) 9705 6277

Ringwood
Tel: (03) 9547 6466

Carlton
Tel: (03) 9650 0048

Relationships Australia (Victoria) Inc

Kew
Tel: (03) 9261 8700

Ballarat
Tel: (03) 5331 1558

Narre Warren
Tel: (03) 9704 7788

Greensborough
Tel: (03) 9432 3033

Sunshine
Tel: (03) 9364 9033

Shepparton
Tel: (03) 5821 1846

Croydon
Tel: (03) 9725 9964

Traralgon
Tel: (03) 5174 1100

Centacare Catholic Family Services

East Melbourne
Tel: (03) 9287 5555

Footscray
Tel: (03) 9689 3888

Mitcham
Tel: (03) 9873 4344

Geelong
Tel: (03) 5221 7055

Dandenong
Tel: (03) 9793 2200

Malvern
Tel: (03) 9576 2377

Drummond Street Relationships Centre

195–199 Drummond Street
Carlton Vic 3053
Tel: (03) 9663 6733

Lifeworks Relationship Counselling & Education Services
Level 5
227 Collins Street
Melbourne Vic 3000
Tel: (03) 9654 7360
Email: lifeworks@lifeworks.com.au

The information provided in this pamphlet is a general guide only. To be sure of your rights and responsibilities, you should get advice from a solicitor or a community legal service.