
Setting Aside Property Orders

A party can apply to the court to have a final property settlement order varied or set aside in certain limited circumstances. It does not matter if order was made by consent or by a judge after a contested hearing.

Grounds for setting aside a property settlement order

A party can ask a court to set aside a final property order on limited grounds. It is not sufficient that the party is no longer happy with the order or disagrees with it. The grounds on which a court can set aside an order are:

- there has been a miscarriage of justice as a result of fraud, duress, suppression of evidence (including failure to disclose information), the giving of false evidence or similar circumstances
- circumstances have arisen since the order was made which make it impracticable for all or part of the order to be carried out
- circumstances "of an exceptional nature" have arisen in relation to the care, welfare and development of a child of the marriage or relationship and as a result the child or the person caring for the child will suffer hardship if the orders are not set aside
- a party has failed to comply with an order and as a result of the failure to comply it would be just and equitable to set the original order aside and make another order in substitution for it
- a proceeds of crime order has been made against a party or the property of a party

Even if the court finds that one or more of the above grounds exists, the court may not set aside or vary the orders. The court has a discretion to decide what is appropriate in the circumstances.

Consent to set aside orders

Parties can consent to final property orders being varied or set aside by:

- making an application to the court for new orders to be made by consent which vary or set aside the previous orders
- From the conduct of the parties the court can infer that they consent to the orders being set aside. For example, if the parties reconcile after the orders are made and act in a way inconsistent with the final orders

Other ways in which final property orders might be varied or set aside

Final property orders can also be varied or set aside if a party appeals the orders made by the court. An appeal must be lodged within 28 days of the order being made.

There are only limited grounds on which an order can be appealed. It is not sufficient that a party is unhappy with the court's decision. A successful ground of appeal might exist if the trial judge made a factual error, made an error of law, failed to give adequate reasons for the decision, was prejudicial or if a party was denied procedural fairness.