

# SELLING A MATRIMONIAL PROPERTY FOLLOWING A SEPARATION - 8 TOP TIPS

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In difficult financial circumstances following a separation of spouses, it regularly becomes necessary for a property to be sold. In many situations, the separated spouses are yet to negotiate or resolve the terms of their division of matrimonial assets. Without a formal agreement or court orders in place, the sale of a property can be a challenging and potentially treacherous process. You might bear in mind the following 8 tips when considering your options for the sale of a matrimonial property:

1. If the house is owned jointly, that is registered in joint names with your former spouse, then it cannot be listed for sale or sold without both spouse's agreement.
2. Where both spouses have agreed to sell a jointly owned property, the real estate agent will require joint instructions agreed upon between the spouses in relation to the listing price, responses to any offers, acceptance of a sale price or sale by auction.
3. When a sale of a jointly owned property is achieved, there must be agreement between the spouses as to the use of the net sale proceeds - that is, whether the funds will be divided between the spouses, or deposited into a shared bank account or solicitor's bank account pending agreement as to the ultimate division of the proceeds between the parties. In circumstances where there is no agreement, the solicitor handling the sale of the property must hold the net proceeds in their trust account until they receive joint written instructions or a Court Order to release the funds.
4. When selling a property owned only by one of the spouses, it is essential that the other spouse is kept informed of the progress of the sale and the intended use of the net sale proceeds. That property is likely to be considered a matrimonial asset and have its value included within the matrimonial pool of assets, despite only being registered in one spouse's name. Accordingly, any threat that the other spouse is being excluded or that the funds may disappear will likely be met with swift court proceedings applying to prevent the sale or to secure the net proceeds until the division of those funds is agreed or determined.
5. Spouses should be wary of the opportunity for the other spouse who owns a property alone to further encumber that property without informing them or requiring their consent.
6. Where a family law property settlement is pending, any proceeds of sale that each spouse receives will be considered as matrimonial funds and taken into account when a final division of the assets is agreed or determined. So be sure to maintain good records of your use of those funds, and appreciate that those records are likely to be shared with your former spouse during negotiations of the property settlement or court proceedings.
7. In circumstances where former spouses cannot agree on any aspect of the sale of a matrimonial property, one spouse can apply to Court to appoint a third party to become responsible for the sale

of the property on behalf of both spouses.

8. The former spouses can agree to any use of the net proceeds of sale of a property, including dividing it between themselves, using it to pay/reduce other outstanding debts, meet children's education expenses, or even contribute towards child support or spousal maintenance payments in the interim period until a final property settlement is agreed upon or determined.

Our [team](#) of experienced Family Lawyers in Brisbane are available to guide you through the sale of a matrimonial property, and achieve a property settlement. There are certain advantages to reaching an agreement with your former spouse, and recording it in a Binding Financial Agreement or Consent Orders before the sale of your property. Contact [Marie Dore](#) to discuss your property sale.

## AUTHORS



**MARIE DORE**  
SPECIAL COUNSEL

+61 7 3231 6350  
[marie.dore@bnlaw.com.au](mailto:marie.dore@bnlaw.com.au)