

FIELD RESOURCE

# Selling After Separation or Divorce

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*Managing a Queensland property sale through a relationship  
breakdown*

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Selling the home is often one of the harder parts of separating. The legal mechanics are not the hardest part. The hardest part is making clean decisions while emotions are still moving. This guide covers the practical structure of a Queensland sale where two people own the property together. It is general information only. For your specific situation, see a family lawyer and a Family Dispute Resolution practitioner before you make decisions you cannot easily reverse.

## How the title is held, and why it matters at sale

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Two people who own a Queensland property together hold it either as joint tenants or as tenants in common. The structure does not stop the property being sold, but it changes what happens to a share if one party dies before settlement.

- Joint tenants each hold the whole property together with a right of survivorship. If one party dies, the surviving party automatically takes the whole property, regardless of what a will says (Queensland Law Handbook).

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- Tenants in common each hold a defined share, often 50/50 but sometimes unequal. There is no right of survivorship. A deceased party's share passes under their will or by intestacy.

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- During a separation, many family lawyers recommend severing a joint tenancy so the title converts to tenants in common in equal shares. This protects each party's estate while a settlement is being worked out.

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- Severance is a registered dealing on title. Your lawyer or conveyancer handles it. Both parties do not need to agree to severance.

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- At sale, neither structure stops the property going to market, provided both registered owners agree to sell. The structure mostly affects what happens to the proceeds, and what happens if one party dies before settlement.

## Who can sign the listing authority and contract

In Queensland, an agent is appointed using a Property Occupations Form 6. The contract of sale is the REIQ Contract for Houses and Residential Land. Both documents need to be signed by every registered owner unless a court order says otherwise.

- Both registered owners must sign the Form 6 for the appointment to be valid. An agent appointed by only one of two owners is not validly appointed (REIQ guidance on the PO Form 6).
- Both registered owners must sign the contract of sale. One owner cannot bind the other to a sale without authority.
- If one party will not engage at all, the other party can apply to the court for orders. The court may appoint one party as sole trustee for sale, giving them authority to sign the Form 6, the contract, and the transfer documents (Federal Circuit and Family Court of Australia).
- Until that order is made, the property cannot be sold without both signatures.
- Each party should have their own conveyancer or solicitor on the sale, even if you share a family lawyer for the broader settlement. Separate representation on the conveyance avoids conflicts at settlement.

## Choosing an agent and the question of neutrality

A good agent in this situation works for the property, not for either party. Both of you are the client. Both of you receive the same information at the same time.

- Interview the agent together where possible. If meeting together is not workable, ask for two separate appraisals run on identical instructions.
- Ask directly how the agent communicates with two vendors. The right answer is in writing, to both parties, on the same email thread, at the same time.
- Ask how price decisions are handled. The agent should not be taking instructions from one party only. Reserve, price reductions, and offers all need both parties' agreement, or a court order authorising one of you to instruct alone.
- Ask for a written record of every offer and every buyer feedback note. In a separation sale, written records protect everyone, including the agent.
- Avoid agents who lean toward one party. The agent who is friends with one of you is the wrong agent for this sale.

## Decision making: lawyers, mediation, and orders

Most separating couples in Australia do not end up in a contested court hearing. The legal pathway most use is Family Dispute Resolution followed by consent orders. Understanding the difference between the available pathways helps you choose the right one early.

- Family Dispute Resolution (FDR) is a structured mediation with an accredited practitioner. Family Relationships Online ([familyrelationships.gov.au](http://familyrelationships.gov.au)) and the Family Relationship Advice Line (1800 050 321) connect you with practitioners.

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- Consent orders are court orders made by agreement, without a contested hearing. You and your former partner agree on the property division, file an application, and the court makes the orders if the division is just and equitable (Federal Circuit and Family Court of Australia).

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- Court orders made after a contested hearing are the same legal force, but follow a longer and more expensive path. Most matters settle before that point.

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- Time limits apply. After a divorce, an application for property settlement must generally be filed within 12 months. After a de facto separation, within two years (Family Law Act 1975).

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- A binding financial agreement is another option. It is a private agreement signed with independent legal advice on each side. It does not require court approval but has strict signing requirements to be enforceable.

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- You do not need to wait for orders to sell the property. Many couples sell first by agreement, hold the proceeds in a controlled trust account, and divide them once orders or an agreement are finalised.

## Getting a fair valuation

A market appraisal from an agent and a sworn valuation from a registered valuer are different documents with different purposes. Both have a place in a separation sale.

- A market appraisal is the agent's written opinion of likely sale price. It is free, fast, and based on local sales evidence. It is the right starting point for setting price expectations.

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- A sworn valuation is prepared by a Certified Practising Valuer registered with the Australian Property Institute. It is the document used in family law proceedings (Federal Circuit and Family Court of Australia rules on single expert evidence).

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- In a contested matter, the court generally requires a single expert valuer jointly instructed by both parties. The cost is usually shared.

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- If you and your former partner cannot agree on the value of the property without selling it, a sworn valuation by a jointly appointed valuer settles the question.

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- If you are taking the property to market, two or three written agent appraisals plus a sworn valuation give you a defensible price view from independent angles.

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- Do not rely on automated online estimates for a settlement. They are not accepted in court and they are not accurate enough at the property level.

## Dividing the proceeds at settlement

How the net sale proceeds are divided depends on what is owed against the property, what each of you contributed, and what your settlement (or order) says. The conveyancer and the bank handle the mechanics. The split itself is set by your agreement or the orders.

- At settlement, the buyer pays the purchase price. The discharging mortgage is paid out first. Agent commission, marketing, conveyancing, and council and water adjustments are paid from the proceeds.
- The net amount remaining is what gets divided. It is rarely 50/50 of the sale price. Run the numbers in advance with your conveyancer so neither of you is surprised at settlement.
- If consent orders or a binding financial agreement is in place, the conveyancer follows the directions in that document.
- If no orders are yet in place, the proceeds can be held in the trust account of one of the lawyers, or in a controlled-money account, until the settlement is finalised. Get this in writing before settlement day.
- Capital gains tax may apply if the property was not the main residence of one or both of you for the full ownership period. A family law rollover may defer the tax in some transfers between former partners. Speak to an accountant before signing anything (Australian Taxation Office, family law rollover provisions).

## The practical logistics of moving out

Moving out is its own project. Whether one party leaves before the sale or both stay until settlement, the logistics need to be talked about early.

- Decide who stays in the home during the campaign. Keeping the property in good presentation is much easier with one occupant than two.
- If one party has already moved out, agree in writing on the access arrangements: who shows the home for inspections, who holds the keys, who pays the holding costs.
- Holding costs (mortgage, rates, insurance, utilities) continue until settlement. Decide who pays what, and keep records. These figures often feed into the final settlement adjustment.
- Personal property and shared furniture should be sorted before the home goes to market, not after the sale. A half-empty home with one person's belongings packed into boxes signals distress to buyers.
- If one party is not cooperating with access for inspections, document each refusal in writing. This is useful evidence if you later need a court to authorise sole conduct of sale.
- Plan where each of you will live after settlement. Settlement comes faster than most vendors expect, and rental availability in Brisbane's inner east is tight.

## Pacing the sale through a difficult time

A separation sale is the same campaign as any other sale, run with more care. The pace is set by the slower of the two parties on any given decision. Build that into the timeline.

- Do not rush to market. A week of extra preparation is cheaper than a flat campaign because the home was not ready.
- Agree on the campaign length and the auction or private treaty method up front. Changing method mid-campaign is hard with two vendors.
- Set a clear decision-making rhythm with your agent: a written update on the same day each week, with both parties on the email.
- If you reach a point where the two of you cannot agree on a price decision, stop the campaign for a few days. Take it back to your lawyers or your mediator. Do not push it through on the floor.
- Be careful with social media and conversations with neighbours during the campaign. Buyers do not need to know the reason for the sale, and the price you achieve is better when the story is not in the room.
- Allow yourself the time the process takes. Most Queensland separation sales run on the same six to eight week campaign as any other sale. The settlement and the orders sit alongside that timeline, not inside it.

*This guide is general information for Queensland homeowners. It is not legal, financial, or tax advice. Speak to a family lawyer and, where relevant, an accountant and a Family Dispute Resolution practitioner about your specific situation. Useful starting points: Family Relationships Online ([familyrelationships.gov.au](http://familyrelationships.gov.au)), the Family Relationship Advice Line (1800 050 321), the Federal Circuit and Family Court of Australia ([fcfcoa.gov.au](http://fcfcoa.gov.au)), and the Queensland Law Society ([qls.com.au](http://qls.com.au)).*

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