

## The Risk of Dealing with Your Assets Prior to Divorce in Hong Kong

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Throughout my career as a family law specialist, I've overseen countless divorce cases. And unfortunately, this means that I've also observed many of my clients repeating the same mistakes. One of the biggest mistakes that many people make is transferring their assets when divorce proceedings are on the horizon.

For some people, their reasons for transferring finances are completely innocuous. They may be repaying a genuine debt to a family member, or transferring a property to a third party pursuant to a genuine sale and purchase transaction. For others, their reasons may be more purposeful. They may want to diminish their own assets in hopes of leaving their partner with less financial gain during the divorce settlement or adjudication.

However, I can't stress enough that regardless of your motivations, transferring assets before the divorce process may not be wise, for three main reasons:

You'll be left with the burden of proof to demonstrate that the transfer was not purposeful to leave your partner with less during the divorce settlement.

In Hong Kong, Section 17 of the Matrimonial Proceedings and Property Ordinance (Cap 192) gives the Court the power to set aside certain transactions if there was intention of defeating the other party's claim for financial provision. If the transaction took place less than 3 years from the date when the divorce papers are filed - there is a presumption that, unless the contrary is shown, the disposing party disposed of the property with the intention of defeating the other party's claim for financial provision.

In layman's terms, this means that if you've transferred any assets within the three years before the divorce proceedings began, you will need to prove that you did not transfer the assets with the intention of leaving your partner with a smaller financial claim during the settlement.

This can be very tricky, even if your intentions of transferring assets were innocuous, because you somehow need to prove that no ulterior motives existed.

Transferring assets will thus add more work for your lawyer, further adding to your legal fees.

In having the burden of proof, your lawyer will inevitably have considerable more work for your case.

Your lawyer will need to investigate your asset transfers and provide concrete evidence as to why the transfers had no ulterior motives to help your divorce. These investigations can be very time-consuming because your lawyer will need to establish the purpose of these historic transactions, and they may even need to get testimony from all third parties involved.

Transferring assets will also lengthen the divorce process.

These days, divorce proceedings are getting more complicated and even lengthier, largely in part of the aforementioned Section 17 of the Matrimonial Proceedings and Property Ordinance.

After understanding reasons 1 and 2 above, you can probably already understand why.

Parties will challenge each other's transactions, leading to a significant amount of added legal work, involving multiple third parties involved in the transactions into the divorce proceedings, and ultimately dragging out the entire divorce process.

## Key Takeaways

Divorce proceedings are already a difficult enough situation for all parties involved, so why not avoid these easy missteps that would otherwise make your divorce lengthier, costlier, and even more stressful? That's why I work closely with my clients to advise them how to avoid these common mistakes.


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