

Family Law Information:

The basics



Family Law

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The information in this brief summary is intended to give a basic idea of family law regarding separation. Legal advice is always dependent upon your particular circumstances, and this is particularly the case in family law.

As such the information in this summary is not intended to be relied upon in the absence of legal advice.

For comprehensive and tailored advice please contact one of our solicitors and we look forward to assisting you.

SNAPSHOT: TIME LIMITS

Divorce - 12 months after separation you can apply.

Property Settlement and Spousal Maintenance:

- 1. Married couples have 12 months from the date of Divorce to apply; and**
- 2. De-facto couples have 2 years from the date of separation to apply.**

Conditions apply and there are exceptions for time limits so seek legal advice as soon as possible.

WE STRONGLY RECOMMEND:

- 1. Considering a cohabitation agreement/pre-nuptial agreement for current or future relationships.**

- 2. Ensuring that the beneficiaries of any superannuation fund or life insurance policies are up to date**

- 3. Making Binding Superannuation Nominations to ensure that your superannuation proceeds will be received by the person you intend.**

- 4. Considering whether it may be appropriate to appoint an attorney pursuant to an enduring power of attorney and I or advanced health directive.**

- 5. Executing an up to date Will.**

Divorce

DIVORCE IS SIMPLY LEGALLY ENDING A MARRIAGE AND DOES NOT SEPARATE THE PROPERTY OF THE PARTIES.

Unless an exception applies, parties must wait 12 months from the date of separation to apply for Divorce.

Until a Divorce Is granted, either spouse may make a claim against the Will of the other spouse, even If they are left out of the Will. Making an up to date Will after separation can reduce the likelihood of success of any estate claim by the former spouse/partner.

Divorce can be applied for jointly or separately by the parties.

Where there Is a child of the relationship under 18 years of age the Court will only grant a Divorce if satisfied with the proper arrangements are In place for the care of the child.

A Divorce Order takes effect one month after the Court grants the Divorce.

For comprehensive and tailored advice please contact one of our solicitors and we look forward to assisting you.

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important Family Law
Advice/Information ..**

Property Settlement

Property settlement can be done at any time after separation (and does not need to wait until Divorce for married couples).

A de-facto relationship exists where parties have lived together on a genuine domestic basis for over two (2) years.

A de-facto relationship or property settlement can also occur in other circumstances including for example, if there is a child of the relationship, if the parties have joint property, or if one party has made contributions to property of the other party.

Effectively the same principles of property settlement apply for married and de-facto couples.

IN WORKING OUT A JUST AND EQUITABLE PROPERTY SETTLEMENT THE COURT CONSIDERS:-

- # What are the assets and debts of the relationship and the value of the assets/debts;
- # The contributions of the parties (financial, non-financial, and homemaker/parent);
- # The future needs and financial resources of the parties;
- # The overall effect of the settlement and whether it is just and equitable.

Superannuation is included in property settlements and a split from one party's fund to the other can be done.

You can find out the amount of the other party's superannuation by sending a form to their superannuation fund.

Seek Documentation

Where there are for example investment properties, companies, or trusts there may be tax consequences such as Capital Gains Tax, Company Tax, or Income Tax liabilities that need to be considered prior to a settlement being agreed and affected.

In complicated property settlements it is important to seek copies of company or trust documents, and obtain information and advice from accountants upon structuring and taxation so that parties' affairs may be arranged optimally.



Assets

IT IS IMPORTANT TO SECURE ASSETS WHERE NECESSARY, INCLUDING BUT NOT LIMITED TO:-

- # **Securing (or withdrawing if necessary) funds in bank accounts;**
- # **Ensuring redraw of mortgages/loan funds can not occur without both parties consent;**
- # **Taking possession of essential/desired chattels;**
- # **Filing a caveat to prevent the sale of property;**
- # **Court injunctions to prevent sale of property.**

It is important that parties act in a way that does not prevent the other party financially supporting themselves.

In cases where a house or land is held as joint tenants it is recommended the joint title be severed so that each party then owns their share of the property separately.

It is usually preferable to agree upon a property settlement rather than resort to contested Court action where possible. Correspondence, negotiations, and/or mediation between the parties and/or their lawyers are recommended prior Court documents being filed.

If assets are being sold, wasted or other issues of urgency arise you should seek legal advice

In cases where a house or land is held as joint tenants it is recommended the joint title be severed so that each party then owns their share of the property separately.

Spousal Maintenance

If either spouse is unable to support themselves to a reasonable standard the other spouse may be required to provide financial support to them if they are able to do so. Spousal maintenance will consider the parties' income, their assets, and any other financial resources.

THE TIME LIMITS FOR PROPERTY SETTLEMENT AND SPOUSAL MAINTENANCE APPLICATIONS TO THE COURT ARE:-

- # **For married couples an Application for Property Settlement must be made within 12 months of a final Divorce Order, this means you must settle or apply to the Court before this time or you will be barred from applying unless you are granted an extension;**
- # **For de-facto couples an Application for Property Settlement must be made within 2 years of separation, this means you must settle or apply to the Court before this time or you will be barred from applying unless you are granted an extension.**

Extensions of time limits may be granted by the Court in limited circumstances.

Children

When deciding arrangements for children the best interests of the children are paramount considerations. Most importantly parents should act in the best interests of children to protect them from physical or psychological harm, or being subjected to or exposed to abuse, neglect, or family violence. Parents should also promote the children having a meaningful relationship with both parents.

There is a starting point that both parents have equal shared parental responsibility for children (including joint decision making for major long term issues) if it is in their best interests.

Parenting Plans & Court Orders

Parents should consider making a Parenting Plan or entering Consent Orders for arrangements for children.

Further assistance in drawing up plans or Orders can be provided by lawyers, Family Relationship Centres or other community centres (please see attached brochure).

A parenting plan is not binding and parents can not be punished by the Court for not following its contents.

Court Orders are binding, and there can be penalties imposed by the Court for noncompliance.

Court Orders about the arrangements for a child are final.

An Order may only be changed if the parties agree, if there is a significant change in circumstances, and/or if it is in the best interests of the child.

A Court Order in relation to a child, will be amended by any subsequent Parenting Plan (unless the Order says it can not be overridden).

The Court is required to have regard to the terms of the most recent parenting plan in relation to the child when making a parenting Order in relation to a child if it is in the best interests of the child to do so.

There are programs available to help people who experience difficulties in complying with a parenting plan or Order, the Family Law Court, a solicitor, or other community organisation can make referrals to such programs.

A PARENTING PLAN OR COURT ORDERS MAY DEAL WITH ONE OR MORE ISSUES INCLUDING THE FOLLOWING:

- # with whom a child is to live;
- # the time a child is to spend with another person or other persons;
- # the parental responsibility for a child;
- # if there is shared parental responsibility for a child it is desirable to include the form of communications about decisions to be made to avoid future conflicts;
- # the communication a child is to have with another person or other persons;
- # maintenance of a child;
- # the process to be used for resolving disputes;
- # the process to be used for changing the plan to take account of the changing needs or circumstances of the child or the parties to the plan;
- # any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for a child.

Time with Each Parent

If your child spending equal time with each parent is reasonably practicable (workable) and in the best interests of the child, then you could consider the option of an equal time arrangement

If your child spending equal time with each parent is not reasonably practicable or is not in the best interests of the child, but the child spending substantial and significant time with each of parent is reasonably practicable and in the best interests of the child, you could consider the option of an arrangement of that kind. Order in relation to a child if it is in the best interests of the child to do so.

SUBSTANTIAL AND SIGNIFICANT TIME MEANS TIME:

- # On both days that fall on weekends and holiday; and days that do not fall on weekends or holidays; and
- # That allows the parent to be involved in the child's daily routine and occasions and events that are of particular significance to the child; and
- # Allows the child to be involved in occasions and events that are of special significance to the parent.

SOME OF THE FACTORS TO BE CONSIDERED ARE:

- # The level of communication between the parties;
- # The ability of each parent to be available and to support the child;
- # The distance between the parent's homes;
- # Any conflict between the parents;
- # Any particular needs of the child;
- # Any other circumstances relevant to the child or the parents.

Mediation

If the parents cannot agree on the arrangements for a child it is necessary for the parties to attend a mediation (and obtain a mediation certificate) before applying for the Court to determine arrangements.

There are exceptions where mediation is not necessary including family violence, abuse, urgency, breach of Orders, or a party's inability to mediate.

URGENT ACTION MAY BE TAKEN:

If you have not seen your child for a prolonged period of time it is recommended you take action as soon as possible to ensure their relationship with you is not damaged.

If there is family violence or abuse it is recommended you consider seeking advice about obtaining a Protection Order.

If you have urgent circumstances such as risk of a child being taken from Australia or being abused you should seek urgent legal advice as urgent Court action may be necessary.

Child Support

Child support is most commonly assessed by the Child Support Agency based on the amount of time with each parent, the number of children, and the parents' taxable incomes.

A Binding Child Support Agreement can be made by parties to agree upon child support (including schooling, medical or other costs) to replace the child support assessed under the child support formula. Such an agreement is binding and can not be changed except by future binding agreement.

Applications to vary or depart from the child support calculated by the child support agency can also be made if the child support is not appropriate.

There are a number of reasons why child support can be varied including the special needs of the child, the assets and property of the parents, the costs of raising the child, debts of the parents, and other reasons.

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Each situation in family law work is usually different to every other to some degree. Most families are different to each other and children are individuals, and therefore this brief overview is intended only as a basic introduction and not to be relied on in place of legal advice.

The Family Law Act, previous family law cases, and other associated practice directions of the Court contain procedural rules and legal principles that are quite complicated and for this reason it is recommended that the advice of a lawyer is obtained prior to taking your matter to Court.

