

In a sticky situation?

A PRACTICAL GUIDE
TO SEPARATION



**SYDNEY
LAW
GROUP**



ON
YOUR
SIDE.

Breaking up is hard to do



Separating from a spouse or partner is difficult, there are no two ways about it. We know that half of all relationships end up in divorce but not one of us ever expects it to happen to our own relationship.

Whether the break-up is your choice or not, the grief you feel can be overwhelming in those early days. You might experience feelings of loss, anger, sadness and resentment, and you may also have to deal with how everyone else reacts to the separation - your partner, children, parents, friends and acquaintances.

Just when you're feeling the most vulnerable, you find yourself with some incredibly difficult issues to work through. How will you and your partner tell the kids? How will you share the parenting? Where will you both live? How will you agree on who gets what? And here's a big one, how can you avoid a long and expensive court process?

Unfortunately, separations can become ongoing arguments which leave everybody feeling damaged. This is what you want to avoid, and the good news is that you really can avoid it if you and your separating partner work together to resolve differences. There's no such thing as a fun separation, but there are separations where both sides keep their dignity intact so that they can move on positively to the next phase of their lives.

This booklet will guide you through the separation process and some of the important things you need to do, consider and decide upon in preparation for and during separation.

“We’re separating, now what?”

Talking to each other

One of the most important things you can do when separating is to communicate clearly and calmly with your partner. If the break-up is coming from you, be clear about your decision to end the relationship. If it’s coming from your partner, take some time to pull your thoughts together, get support and work out what your next steps are.

At this point it’s crucial to recognise that you and your former partner may be in different stages of acceptance of the situation, and so you should approach this life change with as much understanding and flexibility as possible.

Counselling and mediation are useful tools to help you both clarify your thoughts and expectations. Being articulate and realistic about what you want will be a big help when it comes to agreeing the outcomes of your separation.

Talking to the kids

If you have children together, it’s important to talk to them about the end of the relationship. It will be one of the hardest things you have to do and you will most likely have to explain it more than once.

Talk to your children about the change of situation in a way that makes sense to them, and encourage them to ask questions and communicate their feelings and concerns with you. If possible, sit down and share the news together taking care not to blame or demean each other. Be prepared for anger, tears, blame and confusion. If your children are young, there’s a good chance you’ll have to explain what’s happening again and again.

It’s not going to be easy but having these discussions calmly and amicably will have a big impact on how well your children handle the separation.

FIRST STEPS: CHECKLIST

There are a number of practical considerations when you’re separating. Getting things organised will help you feel more in control of the situation and allow you and your former partner to focus on resolving other important issues.

- Consider opening a new post office box and redirecting important mail
- Set up a separate email account and change passwords to any personal media, internet banking and other accounts
- Ensure you have access to funds. You may need to open a new bank account or apply for a separate credit card. You may need to transfer some funds across to that account from your existing redraw facility or jointly held funds
- Pack and take away from the home important irreplaceable items and place important documents (e.g. birth and marriage certificates, passports) somewhere safe. It’s a good idea to make copies
- If you feel you may need to leave the home (even temporarily), pack an overnight bag for yourself and, if you have children, pack some of their belongings as well. If you do move out, take your personal items including medications and records, personal documents, and any other household contents you wish to keep. Getting them later can sometimes be difficult

QUESTIONS TO ASK: FINANCE AND PROPERTY

It's important to think about what will happen with the finances and property once you have separated. The more you can discuss and agree these issues together, the easier the separation will be for you both.

- How will you and your former partner support yourselves and your children?
- Which bank accounts will income and wages go into?
- Who will pay which bills and debts?
- If you're cancelling bills, whose name will they go into and who will pay them?
- Who will stay in the house and who will move out?
- How will the rent or mortgage be paid?
- What will happen with joint bank accounts?
- What will happen to the house, car, furniture, and other assets?
- Do you need to sever a joint tenancy on the property?

Understanding the legal process

Where to start

You can't formally register a separation under law and the law requires you and your spouse to be separated for at least 12 months before you can apply for a divorce. It makes sense to confirm your separation date in writing as proof should you decide to get divorced later on.

If you and your spouse live in the same home during part or all of your 12-month separation period, it's best to talk with a lawyer to ensure you maintain the required level of independence to qualify as separated. Down the track, you may need to provide extra information to the court through an affidavit (a written statement prepared by a party or witness) before you can apply for a divorce. A lawyer can guide you on the information needed in the affidavit as well as witnessing your statement.

You should also seek legal advice if you wish to obtain an order to exclude the other party from your home.

How legal advice can help

Seeking legal advice when you're separating doesn't necessarily signify the beginning of a long and painful legal battle. A good family lawyer will help you understand your rights and responsibilities and avoid confusion about the informal and formal procedures you can take.

The role of the lawyer is to provide you with information and help you identify your options and potential outcomes. You should meet with your lawyer with a set of questions in mind. Take a support person with you if you would feel more comfortable.

Legal advice may help you to resolve the matters between you and your former partner. Though some court applications may need to be made urgently, the issues can often be resolved by consent through well-positioned and considered negotiations.



Property and finances

The need to make lots of important decisions in a short time frame greatly contributes to the stress felt by many people in separation. Who will live in the house? What do we do with our bank accounts or other joint property? Where will the children live and who will take care of them?

Avoiding a drawn-out court process is an important step in achieving a positive outcome. The more you and your former partner can make informal short-term agreements until final long-term agreements can be made, the better for everyone.

When it comes to property, try to reach an informal agreement about how to divide things. It's then a relatively simple process to apply to the Court for 'consent orders' that officially state how your property, including debts, will be divided.

Children

If you have children, you and your former partner can decide on parenting arrangements or a 'parenting plan'. This should allow for as close to equal time spent with both parents as possible, and be mindful of the role of grandparents and extended family. These plans should remain as

flexible as possible to allow for the inevitable change of circumstances for the child or children, particularly as they grow in years and their school commitments and sporting interests develop.

Whilst there are many options for child support payments, these are strictly determined on the basis of the parent's income, and amount of time spent with each parent.

You and your former partner may choose to make a financial agreement covering issues such as money and child or spousal maintenance. For these agreements to be binding, you both need to seek independent legal advice. It may also be worth seeking financial advice from private advisers such as an accountant or financial planner and check your obligations with Centrelink.

Reaching a settlement

It's not always easy agreeing what to do about property and parenting arrangements and you and your former partner may not see eye to eye on everything. A good family lawyer can help you to address a wide range of property and child-related issues and negotiate a settlement with your former partner without going to court. This can often save a great deal of time, money and heartache.

Preparing for a Property Settlement

Here are some things you need to do when separating to prepare for a property settlement upon your divorce. You could think of it as a 'financial stocktake'.

- Prepare an inventory of furniture in the home.
- Check that all insurances are current and payments up to date.
- Obtain originals and copies of the following documents:
 - Tax returns and superannuation interest statements from the past three financial years, as well as any current superannuation statements.
 - Employment contracts or pay slips from the past 12 months.
 - Statements and records of all current leave entitlements.
 - Bank and other financial institution documents as well as loan and credit card statements from the 12 months preceding the separation date.
 - Any share statements and information about all shares in any public company.
 - Financial records (including balance sheets and profit and loss statements) of any company of which you are/were Director or Shareholder for the last 3 years, and corresponding BAS statements.
- Particulars of any trusts of which you are the Appointee, Trustee or any partner, including trust deeds and financial statements.
- Particulars of any property disposed of by sale, transfer, assignment or gift in the 12 months prior to the separation date.
- The address and rate notices of any real estate owned by you individually or jointly with another person.
- Registration certificates of any motor vehicles owned, either individually or jointly with another person.
- An estimate of the value of any contents and any other items of property, tools, machinery or any other assets held.
- Details of any personal injury claim, inheritance or pending inheritance, or other financial resource.
- Use this information to make a list of every asset and estimated value. It doesn't matter if it's held in joint names, or in the name of one partner, or if it was owned by one partner prior to the relationship. Also make lists of every financial resource (including superannuation) and its value, and liabilities or debt and the amounts owing.

Resolving issues without going to court

Family Dispute Resolution

If you and your former partner are disputing about children and property, Australian law requires you to make a genuine effort to resolve issues through family dispute resolution ('FDR'). This must be undertaken before filing an application in court for orders.

Using counselling, mediation and negotiation, it's been shown that as little as 5% of cases require a final hearing in a family law court. There are many advantages of avoiding court:

- You may be able to move on and come to terms with the situation sooner
- Reduced financial cost
- Empowerment to make your own decisions rather than having a court decide for you
- Maintaining or improving communication with your former partner

It is the job of an FDR practitioner not to give legal advice, but to help you and your former partner discuss the issues, assess options and help you to reach an agreement.

Because you and your former partner are the focus of this process, your lawyer takes a back seat and plays a support role, providing information and giving you advice. They will help you develop options and draft settlements, but not be an 'advocate' as they would in a courtroom.

If you and your former partner can't reach a solution through dispute resolution, the FDR practitioner will issue what is called a '601 Certificate' which will permit you to apply to the court seeking orders.

It is important to note, mediation is often not appropriate in cases that involve child abuse or family violence. You should seek legal advice in these instances as these cases are regarded as exceptions to the FDR requirement.

Don't forget to look after you

When you're experiencing stress, one of the first things to get overlooked is often your own well-being. However this is exactly the time when you should be really looking after yourself and monitoring your physical and mental health. Keep up a nutritious diet and moderate exercise, and avoid self-destructive behaviour like drug use, drinking or gambling. Whatever you do, don't ignore signs of stress or depression.

There are many resources available to ensure you maintain your wellbeing at this difficult time. Relationships Australia NSW offer in-person and online counselling, family therapy and mediation, and can be contacted on 1300 364 277.

The Law Society of NSW offers comprehensive online literature regarding children and separation as well as divorce. They can be found here: lawsociety.com.au/community/publicationsandfaqs/index.htm

If you're feeling anxious and overwhelmed contact organisations such as Beyond Blue, by phone on 1300 224 636 or via online web chat, or Lifeline on 13 11 14.

Plan for the future

Remember that this phase won't last forever and you've got a positive future ahead of you. Stay as engaged as you can with your children's lives and keep informed about their progress and behaviour in school.

Consider making a new Will and Enduring Power of Attorney containing specific clauses about it being made in contemplation of both a property settlement and a divorce. If you've made these documents previously, separation doesn't invalidate them. Only an actual Certificate of Divorce does.

Be cautious with your social media activity. Compromising photos or venting posts circulated during separation may backfire. Joining a support group may be useful in helping you find your way and normalise your experience.

Want to talk?

Sydney Law Group is an experienced team of family lawyers who are passionate about achieving the best possible legal results for our clients. We exist to help you through this difficult time and to guide you to a positive outcome without extra emotional or financial stress. We're on your side, every step of the way.

Call us for a confidential chat on (02) 8819 4399. We're here to help.



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