

Separating from Your Spouse or Partner?

Guide: 9 Issues of Family Separation

If you have recently separated from your spouse or de facto partner, or if you are considering separation, it is important that you seek legal advice as soon as possible. This 12 page guide highlights some important issues that arise.

Immediately following separation, couples are usually concerned about financial matters and arrangements for the children.

What you do in the critical period straight after separation can have long term consequences with respect to the care arrangements for children and property division.

It is therefore recommended that you seek experienced legal advice as soon as possible.

There are several legal issues that need to be addressed. The breakdown of a marriage or de facto relationship can be stressful and upsetting. It is a period of great change and it's normal to be overwhelmed with questions, doubts and fears. This guide will cover the majority of the issues that arise, but we encourage you to talk with a lawyer as all situations are different.

If **family or domestic violence** has been and remains a problem, we can advise you in relation to your rights and assist you in applying for a domestic violence order (or refer you to Police or domestic violence agencies). We are here to bear your burden and have those difficult conversations with your ex-partner or their lawyer.

9 Issues of Family Separation:

- 1. Your Home - Who Stays, Who Goes**
- 2. Living Arrangements for your Children**
- 3. Child Support**
- 4. Spousal Maintenance/Support**
- 5. Financial Matters**
- 6. Property Settlement (Including Superannuation)**
- 7. Divorce (If you are Married)**
- 8. Time Limitations**
- 9. Lawyer Fees - Legal Costs**

9 Issues of Family Separation

Issue 1: The Matrimonial Home – Who Stays and Who Goes?

Some separating couples are able to continue to live together while the bigger issues are being sorted, but for most this is not possible or practical. The level of conflict might be having a detrimental effect upon both you and your children's emotional wellbeing.

Someone usually must move out and find alternative accommodation.

Generally, if one party has been the child/children's primary carer for the sake of stability for the children, that parent would remain in the home and the other party would move out.

If parties are unable to agree, then we are able to assist and provide you with advice on what to do. This includes our firm taking the matter up with your ex-partner or their lawyer and in rare cases we can go to Court to obtain an order permitting you to reside in the house to the exclusion of the other party. This is referred to as a **Sole Occupancy Order**.



Issue 2: Living Arrangements for Your Children

It can be difficult, but decisions must be made. Who do your children live with? Do they live with both parents equally (e.g. week about) or should they live with one parent most of the time and spend the rest of the time with the other parent?

Who gets to decide what school your children will go to? Or should they change to another school? Do both parents have a say in this and other decisions that will have a significant effect upon the children's long-term welfare?

If separating parents are unable to agree upon these issues, then **Family Relationship Counselling** can assist.

Alternatively, we can assist you by taking these issues up on your behalf with your ex-partner or their lawyer to reach an agreement. If you are at loggerheads and mediation does not assist, we can apply to the Court for Orders and a determination about what should happen.

We can also apply urgently to the Court for Orders where we consider you are in physical or emotional danger; where there is family violence; or where a child has been taken away by your ex-partner (the other parent) and you are unaware of their whereabouts.

Kidnapping or 'Holding Over' can be a very serious concern for many parents.

If you are worried about the other parent spending time with the children and not returning them to you as agreed, we can assist you by negotiating some Temporary, Interim or Final Orders so that the other parent's failure to return the children to you would be in breach of these orders. If you find yourself in this situation where the other parent refuses to return your children to you, we can assist by filing an urgent application in the Court for interim orders and for what is referred to as a Recovery Order.



Issue 3: Child Support

It is important to consider how the children will be looked after. For example, if your children are living with you most of the time, will this affect your ability to have full time employment? Can you afford to support them financially?

Talking about this is the first step. Have you discussed this with the other parent and asked them for assistance?

If the other parent is refusing to assist financially you can apply to the Child Support Agency for an assessment. We can help you negotiate a Child Support Agreement so that you don't have to deal with the Child Support Agency.



Issue 4: Spousal Maintenance

In addition to both parents having an obligation to support children, couples who separate may also have an ongoing obligation to financially support one another. This is referred to as Spousal Maintenance.

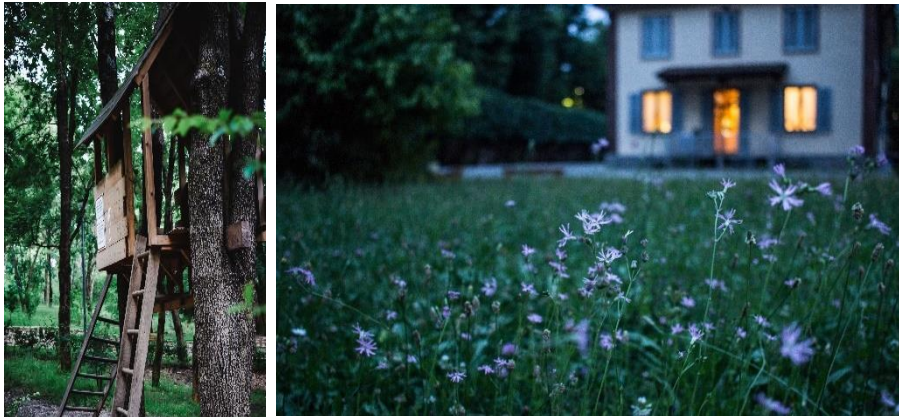
If you have separated and your ex-partner has left you high and dry financially by transferring joint savings from accounts, closing bank accounts, cancelling credit cards etc, we can help. We can assist you in securing financial support from your ex-partner and if necessary, we can apply to the Court for Urgent Orders.

If your ex-partner has been unreasonable and an application to the Court is required, then the Court may also order that the other party pay the legal costs that you incur in applying to the Court.

Issue 5: Financial Matters

It is important to determine what will happen with your finances. You have separated and are living apart - so who pays the bills? This includes home loans, car repayments, electricity, rates, and other commitments.

Again, we can assist by negotiating with your ex-partner or their lawyer an interim or temporary arrangement, while the long-term issues surrounding property division/settlement are negotiated. If no arrangement is reached, we can apply for you to the Court for Interim or Temporary Orders.



Issue 6: Property Settlement

Having separated and decided that your marriage or de facto relationship is at an end, the long-term issue is the finalisation of financial issues between yourself and your ex-partner.

Issues surrounding property can include the **family home, investment properties, commercial properties, family companies, businesses and trusts.**

Superannuation, including self-managed super funds are also extremely important and can be split or divided between parties to achieve a fair outcome after separation. Even if your house and other assets have reduced in value and your mortgage is identical to the value of your house, it is likely that there will be significant superannuation which needs to be split between you and your ex-partner. Receiving your fair share of the superannuation when you separate will have a very significant effect upon your financial position when you reach retirement age.

If you are concerned that your ex-partner is disposing of assets or dealing with property without your consent and contrary to your interests, then we can apply to the Court for orders. These are referred to as **injunctions** and prevent your ex-partner from selling, disposing or otherwise dealing with assets of the relationship. **In these circumstances it is essential that you obtain advice urgently and your lawyer act immediately.**

If there is **real estate property**, for example your home or an investment property but you are not on the title, this does not mean that you don't have an interest in the property. This situation may enable your ex-partner to sell, transfer or borrow money against the property. In these circumstances, to prevent this happening we can assist by lodging a **caveat** over the property on your behalf to prevent further non-informed action and to protect your property interests.

Generally, both parties are anxious to finalise property and financial (including superannuation) issues relatively quickly and cost effectively.

We regularly assist people who have separated and have reached an agreement between themselves in relation to property issues. We can advise you in relation to the *'fairness'* of that agreement, taking into account the various considerations that are set out in the Family Law Act.



If our advice is that the agreement or settlement is unfair, we can assist you by writing to your ex-partner or their lawyer to negotiate a fair settlement quickly and cost effectively. If a settlement is reached, we can then assist with the preparation of legal documents (either Consent Orders or Binding Financial Agreement) in order to finalise and formalise the agreement.

If these negotiations do not lead to a settlement, or if it appears your ex-partner (or their legal representation) is not reasonable, then we can assist by filing an application in the Court on your behalf. This application is for Orders in relation to all property including superannuation. Filing an application in the Court does not mean that your dispute is going to proceed to a final hearing. It may be that the filing of the application will cause your ex-partner to become more reasonable. Prior to the matter going to Court, the Court will insist upon the parties attending either a conciliation or mediation conference. Further efforts will be made to resolve the matter in these conferences.

Legal costs are a factor that must be considered. In our dealings we are always mindful of the legal costs to our clients. We will keep you fully informed about costs so that you have all the financial information you need to make good decisions about settlement.

Issue 7: Divorce

If you are married, you can only apply to the Court for a divorce after you have been separated for a period of 12 months.

Separation can occur while the parties are still cohabitating. Most of the time though, separation occurs when one party physically moves out of the family home.

We can assist you in preparing an application for divorce or 'dissolution of your marriage'.

The application is usually very straight forward and many people do it themselves online. There are fairly substantial court fees that apply (around \$1000). Once the application is filed online, it usually takes around 2 months to get before a Judge. It often depends on how busy the Court is. Sometimes you need to attend Court for the hearing of the matter. Often you don't.

<http://www.federalcircuitcourt.gov.au//wps/wcm/connect/fccweb/how-do-i/divorce/apply-for-a-divorce/apply-for-divorce>



Issue 8: Time Limitations

It is important to know that in both de facto and marriage relationships, **there are time limits which apply** in relation to both property and spousal maintenance.

Most couples who separate, resolve their property/financial issues well and truly prior to their divorce.

If you are married, application for property and spousal maintenance must be made within 12 months of your divorce becoming final. Later applications require special permission from the Court but this permission is not always granted.

If you were in a de facto relationship your application for property settlement must be made or filed within the Court within 2 years of the separation of that de facto relationship.



Issue 9: Lawyer Fees - Legal Costs

Your First Appointment

Your first meeting with us is fixed at \$220 including gst, payable at Reception at the conclusion of your appointment.

We keep the cost of your first appointment low so you get to meet us before you choose us. This fee includes an hour-long appointment with an experienced lawyer + a 15 minute follow up phone call from that lawyer a few days later, once you have thought about the advice given, and what you want to do next.

To speak with an experienced family lawyer about your situation is the best thing you can do. It really is worth finding out as much as you can about what happens in a separation. Do not put off coming to see us because you don't think it's worth it. It is always worth discussing your situation and your options with a lawyer.

Most of the time, the goal is to obtain Consent Orders that address future arrangements for the children and for your property. Sometimes that can be done quickly. Sometimes it can't, as one of the parties is unreasonable. This usually means you must file an Application in the Court for orders to be made by a Judge. Sometimes matters will go to a Court Hearing but most of the time agreement (Consent Orders) will be reached before the Hearing.

In this first appointment, we can give you an idea of what it would cost you if we represent you.

What will it cost if we continue to represent you and advocate for you?

Fixed fees

Sometimes people have almost reached an agreement and only need assistance to have it formalised in Consent Orders. This is something we can do for a fixed fee. (See below.) We are also able to give a fixed fee for Divorce Applications.

Hourly rates

When there are lengthy negotiations and/or Court documents to prepare, or a Conference or Court Hearing to prepare for, it is very difficult to set a fixed fee. In situations like these, lawyer's keep track of the time spent on the matter and charge according to their hourly rate.

Often you can keep costs down by doing some of the work for yourself. For example, in property matters, if you collect financial documents yourself and list them in a particular organised way, you can save hours off your bill.

Some people like to have everything covered by a lawyer. If you can afford it, this is definitely the way to go as it reduces the most amount of stress. If you don't want a

lawyer to do 'everything' for you, we can be in the background helping when you need it. We have options where you do most of the negotiation work and you come and see us to check things are fair or to draft Court documents. In these situations, we charge you an hourly rate for our time.

We will always give you a good estimate of costs in advance of doing work. We can do this once we talk to you and know your situation.

The quicker people can come to an Agreement, the lower the legal fees!

At OSheaDyer we have a great team of experienced lawyers working for our Family law clients. Jodi Dingwall, Cathy Fon and Ivan Baxter are lawyers with substantial Family Law experience. Bridget Barrie, a ParaLegal and Tyla Leo a Trainee Lawyer also assist on Family law matters. Each of these people have hourly rates depending on their experience.

Hourly rates can vary from \$220 - \$440 (inc gst) an hour.

Cost of us Preparing your Divorce Application

If there are no children under 18: \$1000+gst + Court filing fee \$910

If there are children under 18 years of age: \$1500+gst + Court filing fee \$910
Our fees are higher in this situation because - when there are children under 18 we need to appear in Court for the hearing of the Application.

Costs of Consent Orders

If an Agreement has been reached:

If you and your ex-partner are in agreement (or are very close to agreement) you may be eligible to use our stream-lined service to obtain Consent Orders.

When Obtaining Consent Orders for Children or Property Matters, you can obtain:

- Consent Orders for **Property** (Financial) Matters - as long as the financial arrangements you both agree to are in accordance with considerations in the Family Law Act.
- Consent Orders for **Parenting Matters** - as long as the arrangements you both agree to are in the best interest of the children and in accordance with considerations in the Family Law Act.

When you and your ex-partner are in agreement; and you can present financial information to us in an organised format; and we are able to confirm the agreement is sensible and reasonable, we can prepare documentation quickly and the cost can be minimised. The only thing that may affect costs is the complexity of your situation. (For example, if you have many properties that need to be valued, identified correctly, and their split agreed upon; or a family business or trust that need re-arranging).

Costs -

An example costing when Agreement has been reached and complexity is low:

1. **Property Consent Orders** from \$3,700 plus GST + \$165 Court Filing Fee
2. **Parenting Consent Orders** from \$3,700 plus GST + \$165 Court Filing Fee
3. **Both Property and Parenting Consent Orders** from \$5,950 plus GST + \$165 Court Filing Fee

Timeframe-

If you are in Agreement with your ex-partner, or are very close to it, your Agreement could be formalised by Consent Orders within weeks.

Once Agreement has been reached, we can then promptly prepare the necessary Court documents (Application for Consent Orders and Terms of Settlement) and have them signed and filed in the Court within 1 to 2 weeks. The Court will usually approve the Application and make the orders within a couple of days or a week at the latest.

If NO Agreement has been reached and negotiations are required:

Costs-

If we need to enter into negotiations with your ex-partner or their solicitor and can reach an Agreement or settlement without lengthy negotiations, our fees for both negotiating the agreement and preparing the application for consent orders will usually be between \$5,000 and \$8,000 plus gst. This depends upon the property pool and the complexity of the matter.

Timeframe-

If negotiations are required, or an informal conference is held where the matter is discussed, and an Agreement is reached, the Court documents (for Consent Orders) can then be prepared promptly.

Once signed by the parties, the documents can be filed in the Court within 1 to 2 weeks and the orders made quickly by the Court.

The timeframe will very much depend on how negotiations progress with your ex-partner. Often this comes down to how reasonable the parties are. Sometimes properties need to be valued and that can take a week or two to arrange.

If the negotiations go well and/or an informal conference can be arranged quickly (within 4 to 8 weeks), there is no reason why final Consent Orders could not be made within 10 to 12 weeks of your first appointment.

If No Agreement can be reached:

In cases where negotiations are unsuccessful, we will advise you of your options. These options could include attending mediation, filing an Application in the Court or attending a settlement conference (conciliation conference). We will accurately advise you of the costs that will be incurred in each of these options and will give you a timeline with respect to how long this Court process will take.

Sometimes it's necessary to file an Application as a time limitation period is running out and Agreement hasn't been reached.

Sometimes matters are urgent and it's necessary to file an Application for the Court to make Interim Orders. We will always discuss the costs with you in advance.

**At OSheaDyer Solicitors we can assist you with all issues arising from your separation.
Make an appointment to see our experienced family lawyers sooner rather than later and let us put your mind at ease.**

Take the first step towards feeling in control again and call us on 4772 5155.



What Next?

Separation is difficult. This is one of the situations in life where getting good advice from an experienced lawyer is the best thing you can do. You don't have to feel ready. Just take a breath and do it.

Seeking advice from friends and family is important, but unless they are an experienced lawyer who is familiar with the Family Law Act, it is unlikely that they can give you the best advice for your situation.

We invite you to contact us and arrange an appointment to talk about what can be done to ensure you arrive at the best possible outcome for you. This is especially important if there are children and property involved. Call us now on (07) 4772 5155 to arrange your initial meeting with us.

Your First Meeting with Us

***Your first meeting with us is capped at \$220 inc gst.
This is for two important reasons.***

Firstly, we want to help you. And if you are going to need a lawyer to get through this, we want you to have the opportunity to make sure we are a good fit for you, without it costing you too much. We know how important it is to find a lawyer who is understanding, trustworthy, experienced, affordable and who can make a difficult situation easier. We believe we are all these things.

Secondly, your confidentiality is important to us. Often, people who are involved in tough relationships have their spending scrutinised by their partner. We don't want this to be the reason you don't seek legal help. We have set a low fee to ensure that your confidentiality is protected.

In our first meeting, you will be invited to give us information and share your story so that we can work out what is the best plan for you. By the time you leave, you will be confident there is a way through your situation and what needs to happen next.

Call us now on (07) 4772 5155 to arrange your initial meeting with us.