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RIGHTS

DIVORCE



Do you need a lawyer to get a divorce?

If your situation is straightforward and there is no major conflict over children or assets, you may be tempted to get divorced without using a lawyer. But in almost all divorces and separations, a lawyer can help.

A court won't let a divorce go ahead unless you've made proper arrangements for all children under 18. So, if you and your former spouse can't agree on issues such as access to children or child support, engaging a lawyer can help resolve any issues between you.

A lawyer can also help you resolve any dispute about property or financial matters and will make sure you know your legal rights before you agree to a solution.

Is divorce the only answer?

In Australia, a divorce can only go ahead when a marriage has irretrievably broken down. Before this can happen you need to show you've lived separately for at least a year. You can then apply to the Federal Circuit Court.

If your marriage (or de facto relationship) is in crisis, there are alternatives to separation and divorce. In fact, the best first port of call for most couples should always be relationship counselling.

Several organisations offer reconciliation and separation counselling. These include Family Relationship Centres, as well as Relationships Australia, Uniting Care Unifam, Centacare and Interrelate Family Centres.

Does separation mean living apart?

You don't have to live in separate homes to prove that you've been separated for 12 months. It's enough for you to live separate lives under the same roof. While this can be stressful, given the cost of keeping two separate residences, it is sometimes also the only option.

That said, if you do intend to live separately in the same home, you should first ask your solicitor about how to go about it. After all, getting it wrong is likely to complicate your divorce.

Sharing parenting responsibilities

The easiest way to share parenting responsibilities after a separation is to agree on a parenting plan or parenting orders. The sooner you reach an agreement, the sooner things will settle down.

Any agreement needs to be in 'the best interests' of the children. When a court looks at this concept its starting point is that children should have a meaningful relationship with both parents and that they should also be free of physical and psychological harm. It will also take into account the child's age, gender and maturity, as well as their views and relationships both with parents and extended family.

If you can't come to a mutual decision, you'll need legal advice.

You can read more about the best interests of children in our brochure 'Children and Separation'.



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Child support and maintenance

Generally, both parents are responsible for the financial support of their children until they turn 18.

You and your spouse can agree on what an appropriate level of child support would be in your circumstances. If you can't, the Child Support Agency will assess it using a formula. That said, the laws on child support are complex so you should always speak to your solicitor before you agree to anything.

Both you and your former spouse will be expected to support yourselves after separation. But if one of you can't, the other may have to pay maintenance. This usually happens where one spouse cares for young children or can't work due to a disability.

Dividing your property

The easiest way to divide your property with your spouse is to reach agreement before you go to court. That way the court can make consent orders, which will give legal effect to anything you've agreed to informally.

If you want the court to rule on a property settlement or spousal maintenance, you need to file it within 12 months of your divorce. Otherwise, you'll have to ask the court's permission to apply late.

When the court makes a property settlement it will take into account all assets you and your spouse own, including any interests you have in companies or trusts as well as your superannuation.

Before you negotiate any settlement your solicitor can provide you with information and advice about what alternatives you have to court, including mediation, conciliation and arbitration.

Making a financial agreement

A financial agreement can set out any arrangements you and your spouse have reached about property settlements and spousal maintenance. You can make a financial agreement with your spouse at any time – even before or while you're still married – but for it to be binding, you both need to have had independent legal advice before you sign.

How can a solicitor help?

If your relationship is breaking down your solicitor can help you in many ways, including:

- Advising you of your rights and responsibilities when it comes to your children, property and maintenance
- Helping you find the right way to resolve your differences, including through mediation or arbitration and other methods which don't involve litigation
- Explaining your responsibilities under any agreement you've made or helping you enforce the agreement if your spouse isn't sticking to it
- Negotiating a settlement on your behalf so that you resolve any property dispute or parenting issues
- Representing you in court if you can't reach an agreement with your spouse

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