

What to do after a family separation and pending divorce

Have you, a friend or a relative recently separated from a partner? If so, the information below should help.

What is meant by separation?

In Family Law, separation is the point at which a marriage or de facto relationship (including same sex couples) has irretrievably broken down. Under Australian Family Law there is no ability to register a separation. That is, the date of separation is ascertained based on the evidence of the parties.

In the case of a divorce, the date of separation is recorded on an Application for Divorce and is sworn or affirmed to be true and correct by the Applicant. If you intend to file for a divorce, you must have been separated for **at least 12 months** before you file your Application.

For this reason, it is prudent to confirm the separation in writing, even if this is via text message, at or shortly after the time of separation. Family Law matters can often turn upon the actual date of separation and the evidence of the parties as to when separation did in fact occur.

What about de facto relationships?

The relevant legislation refers to factors which the Court must take into consideration when establishing whether or not a de facto relationship exists.

If the length of the de facto relationship was less than two years, for example, the Court may have no jurisdiction under the Family Law Act to deal with the matter. In this case there are alternate avenues to achieve a financial settlement.

In the case of de facto relationships, the parties must file an Application for a property settlement within two years from the date of separation. As such, it is important to establish the specific date of separation.

What about if you still live together?

Separation can take place even though the parties live under the one roof and it can also be a gradual process.

In these cases, the Court will need to examine a number of factors to determine when and if a separation has taken place.

Those factors can include whether the parties:

- ✓ Slept in separate rooms or together after the alleged date of separation;

- ✓ Performed domestic duties such as cooking and washing for each other after the alleged date of separation;
- ✓ Separated their financial affairs to any extent after the date of separation;
- ✓ Lodged or signed any documents informing government agencies of the separation, such as Applications to Centrelink or ATO documents as a single person, as opposed to a person in a relationship;
- ✓ Continued to be intimate after the date of alleged separation; and
- ✓ Made it publicly known (such as by telling friends and family), that they had separated.

Ten things to consider if a person has just separated:

1. Contact your bank or financial institution in writing (by fax or email - with your signature appearing) to stop joint funds being removed or liabilities increased.
2. If you have a Power of Attorney with your partner nominated as your Attorney, ensure it is revoked, and have a new one drafted.
3. Consider whether your nominated death beneficiary for your superannuation entitlements is appropriate.
4. Photocopy all of your and your ex-spouse's financial documents and put them in a secure location (this should not be stored at your home or in your motor vehicle).
5. Review your Will and consider if it is still appropriate in the circumstances and if you do not have a Will, have one drafted immediately.
6. If you have children, contact the Child Support Agency and find out how much is to be paid or is payable.
7. Do title searches on your properties and on your partner's name. If your home is not in your name or is in joint names ensure you place caveats over the properties. If your property is held as a joint tenant, ensure you sever the joint tenancy.
8. If there has been family violence in the relationship you may need to apply for a Restraining/Intervention Order.
9. Start a diary which keeps track of time your partner has with the children and any adverse behaviour he/she displays.
10. Contact our office.



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