

Separation

Separation involves many changes and you will need to make important decisions about a number of different matters. This fact sheet briefly outlines the matters that may arise after separation.

Counselling

When a marriage or de facto relationship ends, many people will experience mixed emotions. Counselling may help to overcome those emotions and assist a person to move forward in life.

Do I have to leave the home?

If a marriage or de facto relationship ends, it does not mean you have to necessarily leave the home. If a property is owned in joint names, then you are both legal owners of the property and neither of you are required to leave. If a property is owned in your spouse's or partner's name only, then that person is the legal owner of the property and may want you to leave the house.

If you have rented a property jointly, with the consent of the landlord, you can change the lease to the name of the person remaining there. If the property is rented in your spouse or partner's name, and a Family Violence Order is in place against them, a court order can be made to terminate the lease and establish a new one in your name.

If you leave the home ensure that you have suitable accommodation to go to, have access to money, have some identification with you, clothes and any other personal items you may wish to take with you.

If the property is jointly owned or in your sole name, you can go back later to collect your belongings. If the house is owned in your spouse's or partner's name, you should try to negotiate a time to collect your belongings. If there is a risk of violence or harassment, you may also consider obtaining a police escort.

Family Violence

If any form of violence has occurred or is likely to occur, you may consider obtaining a Family Violence Order against your spouse or partner. This can be applied for at the Magistrates Court. The Magistrate will determine if a Family Violence Order is appropriate. The Police are also able to issue a Police Family Violence Order. Please see our fact sheet on Family Violence Orders for more information.

Property Settlement

This relates to the division of property arising out of a marriage or a de facto relationship. If the parties are married, property can be divided at any time from separation but prior to obtaining a divorce. Upon a divorce being finalised, the parties have 12 months to commence a property settlement in Court.

For a de facto property settlement parties have 2 years from the date of separation to finalise property proceedings by consent or initiate property proceedings. There are specific gateway requirements that apply to de facto relationships and need to be addressed and/or satisfied prior to filing any formal documents in Court. For more information please see the 'Defacto/Same Sex Property Settlement' fact sheet.

Divorce

This relates to legally ending the marriage. An application for divorce can only be made to a court after the parties have been separated for a period of at least 12 months and 1 day.

If you continue to live together after separation additional requirements will need to be met prior to the court granting a divorce Order

This process may, however, be complicated if you continue to live together after your separation.

Children

Upon separation, parents must make arrangements for the care of the children. Decisions must be made as to “who the child(ren) will live with” and “who the child(ren) will spend time with or communicate with.” Parties are required to participate in mediation prior to making an application in court, unless an exemption applies. Parents can have a verbal agreement or can make a written agreement by setting out agreed arrangements in either a parenting plan or a consent order. For more information on this, please see the ‘Children and Family Law’ fact sheet.

Child Support

This relates to parents making financial arrangements for the children. Either parent can apply for an assessment of Child Support by calling the Child Support Agency on 131 272.

Wills

A will is revoked only on the finalisation of a divorce or on the revocation of a deed of relationship. You may want to consider making a new will upon separation.

Mediation

This is a dispute resolution method whereby parties can identify issues and attempt to reach agreement in the presence of a third party, known as the mediator. Mediation can be very useful when trying to reach agreement on a property settlement, arrangements for the children or child support matters.

Contact The Women’s Legal Service can be contacted on **1800 682 468**.

“Separation” is intended to give general information to people who have or who are contemplating separation. While we have made every effort to ensure the contents of this publication are accurate at the time of publication the law and services do change. Legal and service exactness is not possible in a publication of this nature. This publication should not be used as a substitute for legal advice.

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