

Family Law

Dealing with the consequences of separation and divorce

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Key considerations

If your relationship has broken down, there are some initial considerations that will help you to get your next steps sorted. When you're ready, our experienced team of family lawyers are ready to help you.

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- Divorce:** You must be separated for 12 months before filing for divorce. Divorce severs your marriage but does not sever you financially from your spouse.
- Property settlement:** Is the process of separating and dividing your finances post-separation. This can occur at any time after separation, but must occur within 12 months of a divorce order or 2 years of separation in a de facto relationship. A property settlement will only become 'finalised' through a consent order or binding financial agreement.
- Childrens' issues:** Can be finalised through either a Parenting Plan or Consent Orders. The primary consideration to be taken into account when determining arrangements for children post-separation is "what is in the best interests of the children".



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Introduction

When a relationship breaks down, there are a number of consequences that can follow. These consequences can range from emotional to financial and legal. At Andersons, our Family Law team is here to help you. Family Law covers a wide range of areas including:

- Property settlement
- Childrens' issues
- Divorce
- Child support
- Estate planning
- Asset protection
- Family violence and intervention orders
- Same sex relationships

At Andersons we have a team of specialised and dedicated family lawyers. Our lawyers have considerable experience and expertise in Family Law matters. We understand and appreciate the pain and hurt that can exist at times like this. We provide clear and down to earth advice about what options exist and can help you through each of the matters that need to be dealt with following separation.

Our family lawyers are here to help you reach and formalise your agreement in a way that can best suit your specific circumstances.

Property Settlement

Following the breakdown of any marriage or de facto relationship (including same-sex relationships), the issue of property settlement should be looked at as soon as possible.

There are a range of matters that should be taken into account when determining a party's entitlements to property. It will not always be a 50:50 division, and it is therefore important that you obtain advice from one of our experienced family lawyers to provide you with advice on your entitlements.

It is essential that any agreement reached in respect of property settlement is formalised through the correct legal avenues. There are two ways to do this:

1. Consent Order through the Family Court; or
2. Binding Financial Agreement

Consent Order

This is usually our preferred method of formalising a property settlement.

Once an agreement is reached, this will be drafted into orders which are then filed with an Application in the Family Court of Australia. Neither your nor your solicitor will be required to attend court on any occasion in this process. The documentation is filed with the Family Court and then reviewed by a Registrar of the Court and once determined just and equitable made into final orders for property settlement.

Binding Financial Agreement

There are three types of Binding Financial Agreements:

1. One that is entered into before you enter into a marriage or de facto relationship (commonly referred to as a 'prenup');
2. One that is prepared during the marriage or de facto relationship; and
3. One prepared after divorce or the breakdown of a de facto relationship.

Binding Financial Agreements can be used to formalise your property settlement. In order to enter into a Binding Financial Agreement, both parties are required to obtain independent legal advice. This area of law is complex and one that is constantly changing. Our team of family lawyers can advise you on whether a Binding Financial Agreement would be appropriate for your specific circumstances and if so, help you by carefully drafting the Binding Financial Agreement.

Childrens' Issues

Separation is a difficult time for everyone involved, particularly when children are caught between parents in dispute. Our team of family lawyers can assist you with negotiating your parenting arrangements following separation.

Under the Family Law Act, there is a presumption that the parents of children will share parental responsibility equally. This presumption is rebutted in situations of family violence or where it would not be reasonably practicable. The most important consideration when considering the living arrangements for children post-separation is what is in the childrens' best interests.

Our team of family lawyers will be able to provide you with advice about your legal rights and responsibilities with respect to your children following separation and how the Family Law Act applies to the living arrangements of children. There are two ways to formalise an agreement about the arrangements for your children:

1. Parenting Plan; or
2. Consent Order through the Family Court.

There are significant differences between the above two options. Parenting Plans are not binding and do not have the same force as Consent Orders. A Consent Order is binding, is far less flexible and has consequences if breached. Each situation is different and our team of family lawyers can provide you with advice on the best options to suit your needs.

If parties are unable to resolve their dispute, there are certain requirements that must be met prior to initiating court proceedings. This includes participation in Family Dispute Resolution. Our family lawyers can assist you through this process to ensure that you are adequately equipped to achieve the best possible outcome.

Child Support

Following separation one parent will often have to pay child support to the other parent.

Child support is overseen by the Department of Human Services.

The amount that is required to be paid by one parent to the other depends on a number of factors, but primarily the level of care (number of nights) that each parent is providing to the children and the income of each of those parents is considered. There is a range of formulas that apply in various situations which calculate the amount payable and provide an Administrative Assessment.

Parents can agree to vary an Administrative Assessment and this variation can be formalised by either a Limited Child Support Agreement or a Binding Child Support Agreement. This may be of particular importance where there are private school fees involved as the Administrative Assessment will not take these fees into account. Our team of family lawyers can discuss the option of entering into either a Limited Child Support Agreement or a Binding Child Support Agreement with you.

Divorce

Our team of family lawyers can assist you with getting your divorce. We can provide advice about time limits that apply with respect to divorce applications and the requirements for divorce.

There are certain matters which can make a divorce application more complicated and our team of family lawyers have extensive experience in these situations including:

- Overseas marriages;
- If your spouse is missing and you are unable to 'serve' them;
- If you have been separated but living under the same roof;
- In situations where you have been served with a divorce but disagree with the facts; and
- Where there are children under the age of 18 years.

