

Family Separation: The Basics

Relationship breakdown is a very emotionally distressing experience. People considering separation or divorce, and those affected by it, are encouraged to use services available to them.

Difference between divorce and separation

Divorce is the formal legal ending of a marriage and can only occur when a married couple has been separated for a minimum of 12 months. Needless to say, de facto couples don't need to apply for a divorce.

Separated couples, either married or de facto, don't have to wait a minimum time period before beginning Property Settlement procedures or Family Dispute Resolution.

Separated couples can still live together, however will require evidence to prove the separation.

Process to trial

In September of 2021, the Federal Circuit and Family Court of Australia implemented a new process to handle family law matters. Matters will not make it to trial without first going through a mandatory mediation process – otherwise known as Family Dispute Resolution.



It is expected that under this new process to trial, 90% of cases will now be resolved within 12 months.

Family Dispute Resolution (mediation)

Family Dispute Resolution (FDR) is a specialist form of Mediation for separated couples with disputes relating to children, property settlement, divorce, and child support.

The Family Law Act now requires separating parents to attend FDR before they are able to institute Court Proceedings.

One of the aims of the Legislation is to encourage parents to try to resolve their differences without having to go to Court and to give both parents a say in their children and their financial futures.

This completely confidential process helps the parties define the issues in dispute, keep the lines of communication open and help the parties express their interest clearly and respectfully.

Mediation assists in the development of options to resolve the issues and to help the parties overcome any obstacles in reaching an Agreement.

The Property Settlement Process

When people separate, more often than not, they need to determine how they are going to divide their assets (property) and debts. There are a number of ways this can be achieved, including:

- Through agreement without any court involvement;
- By formalising an agreement through consent orders in the Family Court, or
- If agreement cannot be reached, by applying to the court for orders relating to the division of property and payment of spousal maintenance.

In Australia, parties are at liberty to decide between themselves how they will divide their property after separation. Where an agreement is reached, it is important and sensible to formalise it to provide certainty and finalise the financial relationship between the parties.

If the agreement is left on an informal basis, there are a number of property related exemptions and relief that will not be available to you. Further, and more importantly, each party remains exposed to a claim by the other.

The Four Step Process

Whether the parties reach their own settlement or through a litigated court process, the Courts will apply a four-step approach to ensure that final orders and adjustments to the property pool are just and equitable.

These final orders may or may not accord with an individual's own sense of justice.

See the Four Step Process in greater detail in a separate resource available on our website.

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Time Limits

The Family Law Act applies strict time limits in relation to property settlement or spousal maintenance for a divorce or separation. Each party seeking property settlement orders must do so:

- in married couples: any time from separation until 12 months after a divorce is finalised; or
- in defacto relationships: within two years after separation, regardless of any informal agreement.

If you're recently separated, get in touch with the family law team today to navigate the first steps of this technical process.

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