

Family Law – Frequently Asked Questions

When can I apply for a divorce?

Before a spouse may apply for a divorce, they must be separated for at least 1 year and 1 day.

How do I know if I am separated?

Separation means when the parties have decided to “sever and not resume” the relationship. That means that it is possible to be separated even though you are still living together.

Is the separation date important?

The separation date is important because you cannot apply for a divorce until you have been separated for 1 year and 1 day. For de facto couples, you have 2 years from the date of separation to commence proceedings for property settlement. If you have any questions about the separation date it is wise to see a lawyer for advice about determining the separation date.

What are the timelines for family law proceedings?

There are no timelines for cases involving the care of children.

In property cases, married couples must commence proceedings within 1 year of the date of divorce. De facto couples must issue proceedings within 2 years of the date of separation. If you have not issued proceedings within these timeframes, you must seek the leave of the Court to do so.

What parenting orders do I need?

The orders you need will depend on the specific circumstances of your case, but can cover issues like, who makes the decisions about the children, where the children live, the children’s contact with the other parent or other significant people, where the children go to school, whether a child can travel overseas, and if so on what conditions.

How does the Court decide what parenting orders to make?

Generally all decisions must be guided by the ‘best interests of the child’. There is a long list of considerations in determining the best interests of the child, and includes matters such as the benefit of child having a meaningful relationship with their parents, the need to protect the child from harm, neglect and family violence, the child’s age and stage of development, the nature of the child’s relationship with major figures in the child’s life, the capacity of the parent to provide for the child’s physical and emotional needs, practical issues, cultural issues and the effect on the child of any changes to the child’s circumstances.

How is a property settlement achieved?

A property settlement involves working out what assets and liabilities the parties have (including consideration of trust assets or other interests). The Court must then take into account financial and non-financial contributions made by the parties, contributions as a homemaker or parent, future needs factors (such as your age and state of health, capacity to earn income, the length of the relationship and whether a party has the primary care of a child), any other Orders that may be in effect and the payment of child support. In certain circumstances spousal maintenance may also be ordered. The significance and relevance of each consideration depends on the specific facts of each case.

Can I negotiate a settlement with the other party?

Of course. In parenting cases, unless it is urgent or there is family violence, the legislation requires the parties to undertake a form of mediation known as Family Dispute Resolution. In property cases, the legislation urges the parties to make a reasonable effort to settle a matter before going to Court. Most family lawyers will encourage you to mediate an agreement if that is possible. A mediated outcome can be the most efficient way of dealing with a family law matter and offers rooms for flexibility and creativity in working out your issues. However there are some cases that need Court intervention.

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Do I need a lawyer?

A lawyer can help in a number of ways, not just by the traditional representation model. A lawyer can be engaged to give advice to help you understand your entitlements, or make suggestions to resolve discrete issues between you and your former partner. A lawyer can also be engaged to formalise an agreement that you have reached with your former partner, that way 'making it legal'.

Maria Kourtis

Senior Lawyer

Expert advice. Practical solutions. Personal service.

Level 11, 575 Bourke Street, Melbourne Vic 3000 Australia | GPO Box 38, Melbourne 3001 | DX 400

T 03 8621 2888 F 03 9614 0880 | www.mckeanpark.com.au