

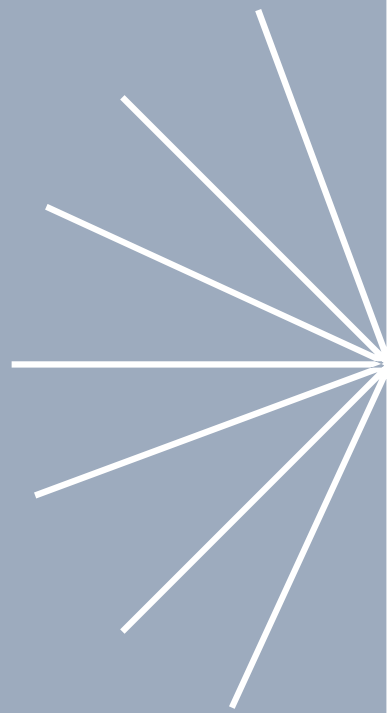


DIVORCE & SEPARATION GUIDE

Your free guide to separating, property settlement and divorce.



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SEPARATING?

We're truly sorry to hear this and we understand this is probably a highly emotional and stressful time for you, so let's try and make it as pain-free as possible by providing as much information as we can to guide you through the process of separation and divorce.

Please don't be afraid to ask for assistance if you are feeling overwhelmed. There are a range of support networks or counsellors that are available to ease the process if you are struggling. There is no shame in asking for help in this difficult time.

It is now really important to clearly understand the separation and divorce process so you can navigate the various stages involved. Separation is different to divorce and, contrary to popular belief, the splitting of property and any child custody arrangements are separate to the actual legal "divorce".

The main stages of a full divorce are separation, parenting arrangements, financial/property settlement, spousal maintenance and the legal divorce (if you are married).

It is also important to note that if you have just separated from a de facto relationship you usually have the same legal rights as married couples regarding property

THE STAGES

Separation

The first step of the process is to legally separate. This may begin from the time you or your partner leaves your home. However it is possible to be legally separated while you are still living under the same roof, for example, you may decide it's better to stay in the same house for the sake of any children. During the separation stage, you must make decisions regarding your children and your property (assets and debts).

Property and Custody Agreements

Once separated you need to create agreements for your property and custody of any children under the age of 18. These agreements are separate from the actual divorce. The easiest (quickest and cheapest) way to create these agreements is through the creation of Consent Orders where both you and your ex-partner agree on their terms. If you are unable to agree on the terms of these arrangements, the Court must get involved.

Divorce

A divorce is the legal process of formally dissolving a marriage. The term "divorce" solely relates to the dissolution of a marriage and does not deal with the dividing up of assets between the parties. You are only allowed to lodge a divorce application after you have been separated for 12 months and one day.



SEPARATION

When you decide it is the time to actually separate it's important that you and your (ex) partner both:

- Have a good understanding of your finances
- Have an understanding of your legal rights
- Have an understanding of your interests with regards to any property or children
- Document all income sources and amounts, debts, insurances and expenses
- Consider the costs associated with moving out and setting up a new home and prepare a budget to ensure you will be able to cover the costs.

Some other factors to consider are:

- Where your children will live and who will take care of them?
- How you and your former partner will support your children and yourselves?
- Who will pay any outstanding bills and debts?
- Will either of you remain in your current home?
- Who and how will the rent or mortgage be paid?
- Who will pay any loan repayments?
- What will happen to any joint bank accounts?
- What will happen to assets such as the house car, furniture?

It is recommended to seek professional advice at this early stage of the separation process. This is so you understand your legal rights and responsibilities. A lawyer will protect your interests and explain cost effective options to help you reach an agreement with the other party to avoid having to go to Court. During a separation you want to be able to make informed decisions with confidence.

Yes it is an emotionally challenging time and there will be many difficult conversations but having them now will ensure you will not be taken advantage of should any issues arise later on.



PROPERTY SETTLEMENT

Once your relationship has ended and you have decided to separate and get a divorce, you and your ex-partner must decide how your finances, property and debts will be divided between you. This is called "Property Settlement".

A property settlement can be completed before the legal divorce, however, if you choose to make a property settlement after your divorce, the application to the Court must be made within 12 months of the Divorce Order coming into effect.

For de facto couples the application must be made within two years from separation.

It is recommended that individuals apply for a property settlement sooner rather than later, particularly if a certain property is likely to gain value over time.

Your property settlement can be negotiated between you and your ex-partner without going to Court.

If you can both agree amicably on how to divide your assets, debts, and superannuation, you can create "Orders" (legal documents) that are filed to Court to make them legally binding.

All property is then legally allocated according to the agreement and is considered separately owned by the individual parties.



If you are unable to agree on your property settlement you can apply to the Court to determine the split of the property.

As each person's case is unique the Court will decide who gets what based on the individual facts of your case. The Court will consider a variety of factors relevant to your situation and will determine a "fair" result for you and your ex-partner.

The Court considers the value of your assets and the contribution you have both made to the relationship since it began, as well as your future needs based on your age, health, and ability to generate income.

You may have an entitlement to a share of the property, however, it is important to note that there is no fixed percentage of property allocation in Australia.



DIVORCE

A "divorce" is an Order from the Court that legally ends a marriage between you and your ex-partner, recognising that you are no longer married.

In summary, the five steps to a divorce are:

1. You have to be separated for at least 12 months and one day
2. An application for a divorce is filed with the Court
3. If the application is not a joint application, the spouse is served with the divorce papers
4. A hearing date is scheduled and you must check if you are required to attend
5. The divorce is finalised one month and one day after the hearing

Australia has a 'no-fault' divorce system that means neither you nor your ex-partner must provide reasons as to why you wish to divorce.

Requirements to file a divorce application

To be issued with a Divorce Order, you will need to show that:

1. Your marriage irretrievably broke down.
2. You have been separated from your husband/wife for no less than 12 months; and
3. There is no reasonable likelihood of reconciliation i.e., it isn't likely you will get back together.

If you can demonstrate the above requirements you can [Start your divorce by clicking here](#) or visit <https://www.forgelegal.net/online-divorce/>

If you are unsure whether you can demonstrate the three points above as there may be circumstances that make this unclear, reach out to us for a free Discovery Session.

DIVORCE

Considerations before filing

- There must be a proper arrangement for any children of the marriage before you receive a divorce order. We can help you with your children's matters also if you require.
- Even if you are still living in the same home together, you may still be considered separated. If you are unsure, please reach out and we can provide some clarity with your current situation.
- If you have been married for less than 2 years, you will need to take part in counselling before filing your application. There are exceptions to this rule, so please, reach out and we can determine if this will apply to you.
- To apply for a divorce in Australia, you and your spouse must meet one of the below criteria:
 - You are an Australian citizen.
 - You have lived in Australia for 12 months before making an application for a divorce; or
 - You must be lawfully present in Australia and consider the country your permanent home.

Service of the Divorce

Divorce applications can be made by either party involved, individually or jointly. If you are applying individually, it's important that the documents served on the other party align with the rules of the court. If the parties have children under 18 and it is not a joint divorce application, the individual applying for the divorce must attend a court hearing.

Once a court hearing has been successfully completed, the court will issue a divorce order which will terminate the marriage one month and one day after the order is issued. A certificate that the divorce order has taken effect will be given to each party. We can assist with this process, including engaging our referral partners to effect service on your behalf.

Additional Documentation you will need

We will need the following documents to complete your divorce application:

- a colour copy of both sides of your Office of Births, Deaths and Marriages Marriage Certificate (looks like a Birth Certificate); and
- a scanned colour copy of both sides your photographic ID (driver's license or passport information page)

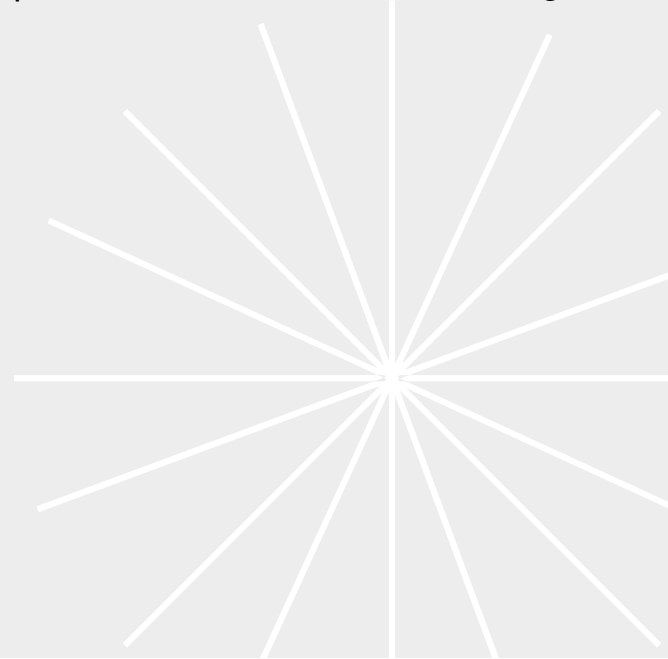
Divorce Costs

Our fee covers drafting and arranging your divorce application as well as ensuring your rights have been considered.

There is a government divorce filing fee. Please note if you have a health care card the government filing fee is reduced.

Important Divorce Timeframe

If any of the parties want to apply for a property or maintenance order, they must do so within 12 months of the date the divorce order takes effect. If not, permission from the court must be sought





QUEENSLAND FAMILY LAW PRACTICE

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