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MARRIAGE BREAKING DOWN

Is Divorce the only answer?

If your marriage has reached a stage where it appears to have broken down, you should try counselling before taking the step of separation. Reconciliation and separation counselling services are offered by a variety of organisations such as the Family Court, Relationships Australia, Unifam and Centacare, social workers and psychologists.

Counselling may be undertaken at any stage in your relationship and all discussions are confidential. The earlier you have counselling the better. Mediation is also available to assist parties to resolve disputes over financial matters, property and children.

If Counselling doesn't work, how do I get a divorce?

The only ground for divorce is irretrievable breakdown of the marriage. To show the marriage is irretrievably broken down, you and your spouse must have lived separately for at least one year. Following the years separation, either spouse can apply to the Family Court or Federal Magistrates Court for a divorce. Applicants pay a filing fee to the court for dissolution of marriage unless they are eligible for an exemption.

We can't afford to have two homes.

It is possible for you and your spouse to live separately apart under the same roof during the separation period. If you intend to live separately in the same home, you should consult a solicitor first because living in the same home does complicate a divorce. Someone who knows you and your spouse may have to tell the court that you have lived separate lives whilst under the same roof.

You and your spouse should not sleep together or socialise together and domestic services such as cooking, washing or ironing should only be done for the other if it is understood and acknowledged that such help is given for the sake of practicality or convenience.

Do I need a lawyer?

In straightforward cases where there is no dispute about children, it is permissible and usually simple to obtain a divorce without a solicitor.

You will need a solicitor if you or your spouse are in dispute about a child or child support, because the Court will not normally allow the divorce to become final unless it is satisfied that proper arrangements have been made for children under 18 years.

Before you try to settle any disputes about property and financial matters, you should obtain advice from a solicitor about your legal rights. Both parties usually need to have independent legal advice before a Court will make a financial settlement legally binding.

How will our property be divided?

Most settlements are resolved by agreement with 'consent orders' being made by the Family Court, Federal Magistrates Court or the Local Court.

A property settlement can be finalised at any time after separation and before either spouse applies for divorce. However, an order for property settlement or spousal maintenance must be sought within 12 months of the divorce, or you will need the Court's permission to apply out of time.

In deciding what is a fair division of the property, your solicitor, and the Court will take into account:

- ⇒ Each spouse's contributions to the family and to the acquisition, conservation and improvement of the property during cohabitation. In most cases caring for the family and home is considered to be of equivalent value to earning income;
- ⇒ The present and future income, needs and responsibilities of each spouse.

All property and financial resources belonging to you and your spouse are relevant and can be dealt with by the Court, including interests in companies, family trusts and superannuation.

Who will the children live with? How are parental responsibilities shared?

The short answer is as agreed between the parents. Parents should try to agree on parenting orders or a parenting plan for their children when they separate. If you and your spouse cannot agree who the children will live with, you will need legal advice, the sooner you can reach agreement the sooner things will settle down. Agreement can best be reached using negotiation, counselling, mediation or conciliation.

When the Court makes orders, the best interests of the child is the most important consideration. Among other things, the Court will take account of: the age, sex, Background, maturity and any expressed wishes of the child; the child's relationship with each parent and siblings; the effect on the child of separation from either parent; the parents' attitude to the child and to the responsibilities and duties of parenthood; the capacity of each parent to provide adequately for the physical, emotional and intellectual needs of the child; and whether the child has been involved in or witnesses domestic violence.

If the children do not reside with you, you should discuss arrangements for them to have contact with and visit you. Contact is the child's right, not the parent's, and in disputes about contact you will normally be granted a contact order unless the Court believes that contact will not benefit the children.

Do I have to pay child support for my children or maintenance for my spouse?

Both parents are responsible for the financial support of their children until each child reaches the age of 18 or until completion of the school year in which the child turns 18. Child support can be paid as the parents agree or the Child Support Agency can collect it from the other parent.

The Child Support Legislation is complex. If you wish to know what amount is payable, you may contact the Child Support Agency or speak to a Solicitor who practises in this area.

In relation to spousal maintenance, each spouse is expected to try to support themselves after separation.

Maintenance may be payable if one spouse is unable to meet their own needs and the other spouse has the capacity to assist. Common examples are a spouse having the care of young children or a spouse being unable to work because of physical disability while the other spouse has a high income and an ability to pay.

Financial Agreements

Married and divorced couples can enter into binding financial agreements before and during marriage or after separation or divorce.

To be binding, each spouse must obtain independent legal advice about the agreement from a lawyer before they sign it.

How will a solicitor help me?

Your Solicitor can:

- ⇒ Act for you on your divorce;
- ⇒ Advise you about your rights regarding children, maintenance and property;
- ⇒ Check any agreement you have made and tell you how it can be changed or enforced;
- ⇒ Advise you about the possibility of resolving or narrowing issues in dispute by using services such as counselling, conciliation and mediation;
- ⇒ Negotiate a settlement of financial or parenting issues on your behalf;
- ⇒ Advise you if you may qualify for Legal Aid;
- ⇒ Prepare a financial Agreement or Parenting Orders for a Parenting Plan on your behalf;
- ⇒ Represent you in Court if there is a dispute about children, property, maintenance or child support.



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