

YOUR SEPARATION GUIDE

Separation is a difficult time. You should be as prepared as possible.

The following is a practical guide of key things you need to do when you separate, and particularly before you leave the matrimonial home and what you should do once you have left.

What to do before you separate

As you may not be permitted by the other party to re-enter the matrimonial home after you have left, it is important that when you go you take all important items with you.

1. Take the children's passports and birth certificates

This will ensure that there is no risk that your former partner can take the children out of the country without your consent.

2. Take a copy of all financial documents

Before you leave the home you should ensure you take a copy of all financial documents.

Financial documents are documents relating to the assets, liabilities and financial resources in your name and your former partner's name. They include, for example, bank account statements (including personal accounts and mortgage statements), pay slips, tax returns, superannuation statements, share statements, credit card statements and the like.

Whilst you will be able to get a copy of the documents relating to the assets and liabilities in your name after you have left the matrimonial home it may be a lot more difficult if not impossible to access documents for assets and liabilities in the name of your former partner.

One problem we often encounter when a client comes to see us is that they were kept in the dark about the finances and they do not have any financial documents so they do not understand their financial situation.

If you can provide us with a copy of all relevant financial documents at your initial consultation, or at least if you have a reasonable understanding of the assets, liabilities and financial resources of the parties it will give us a better idea of the property pool that exists which will enable us to give you more refined (as opposed to general) preliminary advice as to your property settlement entitlements.

The first step is generally for us to write to your former partner and ask them for a copy of their financial documents. This can sometimes be a difficult process if your former partner refuses to comply with our request. In these circumstances, it may be necessary to commence court proceedings to force your former partner to the bargaining table and we can seek Orders that she/he provide us with a copy of her/his financial documents.

3. Take all the furniture/contents/personal belongings with you

Do not leave anything behind that you wish to keep. Photo albums and other personal items are normally very contentious so we suggest that you take them with you when you leave. We recommend that you arrange for the removal of all furniture and personal belongings that you wish to take at the time you leave the former matrimonial home. If you do not take them at the time you leave, you may find yourself in a position where your former partner changes the locks and refuses to allow you to access these items at a later time or there may be a dispute later on about which items you are 'allowed' to take.

The other reason it is important to take as much with you as you can is because in a property settlement, furniture and household contents are attributed a value by the Court which is much less than replacement cost (i.e. insured value). You may have your furniture and household contents insured for a significant amount, however, the Court values furniture and household contents in terms of how much it would all sell for if you put all your household contents out on your front lawn tomorrow and had a garage sale. 'Garage sale' value is generally significantly less than the insured/replacement value of your household contents. For the average sized household, a house full of furniture and contents is usually valued between \$5,000 and \$10,000, unless either party has some assets of a special nature such as antiques or collectables.

It is therefore financially beneficial for you to take as much as you can when you go rather than having to buy a whole house full of new furniture. Having the furniture also favours you in the property settlement because you are receiving an item of property from the property pool that is undervalued by the Court.

4. If possible, remain in the matrimonial home

You do not lose your right to a property settlement if you leave the matrimonial home. It may be necessary for you to leave the matrimonial home if domestic violence is a factor and your former partner refuses to leave. However, if possible, we suggest that you remain in the home, particularly in circumstances where you are not working and/or the children are living with you as it will be less disruptive for them and will reduce financial pressure associated with sourcing alternate accommodation, pending a property settlement taking place.

What to do after you have separated

1. Keep a note of the date of separation and communicate it to your former partner

The date of separation is important. The date when you separate impacts upon when you can file an application for divorce, or for de facto couples, it impacts on the date by which you must file an application in Court for property settlement and spousal maintenance.

2. Consider counselling for you and the children

Separation is often the most difficult time in your life. Counselling is often a useful tool to help manage/cope with the changes inherent once separation takes place.

3. Apply for child support & Centrelink

It is sometimes but not always the case that your former partner agrees to continue to provide you financial support for yourself and the children, following separation.

If not, dependant on your financial circumstances and the financial circumstances of your former partner, you may be entitled to spousal maintenance from them to assist you in the interim period to meet your ongoing living expenses and in certain limited circumstances, the expenses of the children.

You should contact us and seek legal advice regarding your right to spousal maintenance. In the meantime, there are certain steps you should take as soon as you separate from your former partner, to assist you in meeting your ongoing living expenses and the living expenses of the children.

If you are the primary carer of the children, you should apply for child support payments from the Child Support Agency.

You may also be entitled to apply for Centrelink payments to receive some additional financial support for yourself.

There is a time lag of a couple weeks or more from the date of your application to when you receive your first payment.

Therefore, if you are not working and do not have any financial resources at your disposal, it is especially important that you take these steps as soon as you separate.

If you go onto the Child Support Agency website and utilise the child support calculator you will be able to get a rough estimation as to what payments you are likely to receive from your former partner. How much you are paid depends on a number of factors including for example, the ages of the child/children, how much time the child/children are spending with each party and each party's taxable income each year.

4. Acquire some funds to support yourself and the children

You should consider securing funds from your own account/joint sources to meet expenses you are likely to have in the initial period following separation (e.g. for accommodation, furniture and other re-establishment costs). This is especially important in the circumstance where all accounts are held in the other person's name, you are not working and/or you have primary care of children.

5. Protect your finances

Following separation, it is important that you protect your finances by closing down all bank accounts in your name to which your former partner has access or alternatively in the case of joint accounts, redirecting your salary to an account which only you can access.

The same goes for credit cards. You should consider closing down any credit cards in joint names or in your name to which your former partner has access or otherwise you remove them as a secondary card holder.

In relation to any and all joint loan accounts or lines of credit, if there is a redraw facility, you should consider notifying the Bank that you require that any further draws only be made with the prior written consent of both parties.

6. Change ownership of real estate

If you have any real property that is held with your former partner as joint tenants you should consider severing the joint tenancy so that you both hold the property as tenants in common. When the property is owned by two parties as tenants in common those two parties own the property in equal shares (or whatever other division is specified on the title) such that when you die, your share of the property will be distributed in accordance with the terms of your will. If you own the property as joint tenants, as most people do when they are married or in a de facto relationship, if you die your interest in the property will go directly to the other joint tenant, your former partner.

7. Protect your equitable interests

Where real property is held solely in the name of your former partner (e.g. the matrimonial home or an investment property), it is important to protect your rights to a property settlement by ensuring that the property is not sold or further encumbered without your consent, before a property settlement agreement is reached. There are certain actions that can be taken to protect your interests. One example is by lodging a caveat. You should contact us for advice regarding how this can be done.

8. Change your passwords

This is something that people often forget to do. Separation can turn ugly quickly if your former partner accesses your bank account without your consent. You should consider changing your bank card passwords, internet/telephone banking passwords for any accounts held in your name or jointly with your former partner.

9. Change your will

You should change your will as soon as possible following separation, to ensure that you do not pass on any assets to your former partner.

For more detailed information on changing your will following separation and why it is important, ask for a copy of our fact sheet on 'changing your will after separation'.

10. Change your nominated beneficiaries for your life insurance and superannuation

You may have nominated your former partner as the beneficiary of your life insurance and superannuation policies, in the event of your death. You should notify these entities as soon as you separate and change your preferred beneficiary.

11. Change your enduring power of attorney

If you have an enduring power of attorney and you have nominated your former partner for this purpose, you should change it straight away following separation.

12. Make arrangements with your former partner as to who will continue to pay the bills

If possible, you should have discussions with your former partner to try and reach agreement as to who will pay what bills in the interim period, pending a property settlement taking place (e.g. the mortgage, rates, utilities, phone bills, credit card bills and other joint debt).