

Family Law Separation Check List



I am thinking about separating, what should I do?

The breakdown of a marriage or de facto relationship can be an unsettling and distressing time. There are typically three common ways to reach a resolution, an amicable and negotiated approach with your partner, a mediated outcome or litigation.

From a practical perspective, it is important you consider obtaining independent legal advice as soon as possible to ensure you understand your entitlements. Obtaining legal advice prior to separating is always recommended if possible.

Separation Checklist

If you have separated from your partner, or you are considering separation in the imminent future, we would encourage you to be proactive and consider the following separation checklist:

1. Who is going to leave the family home?

In most scenarios, one person moves out of the family home. If you are the primary carer to the children, you should consider remaining in the home so that the children have continued stability. Once you have moved out of the property, it can be difficult to move back in and you have associated financial costs with sourcing alternative accommodation.

2. Do I need to take my clothes and personal items with me?

If you are leaving the family home you typically will not be returning. It is therefore important that

you take everything you will need including clothes, jewellery, sentimental items, furniture and appliances. This will save time and money down the track as you will not need to negotiate with your partner to return your own belongings.

If you are leaving the family home with your children due to safety concerns, we strongly encourage you to take all items with you including school uniforms, books, iPads, clothes, toiletries, medication and toys as it may be difficult to get these items back at a later date.

3. Do you have copies of all legal and financial documents?

It is important for you to understand the assets and liabilities of the relationship as it is likely you will be negotiating a property settlement with your partner.

You should make sure you have copies of bank account statements, pay slips, taxation returns, superannuation member statements or knowledge of which accountant your partner or your family has engaged over the years. If you and your partner own particular chattels that are valuable, such as paintings or other antique collections, take photographs of the items so that you have accurate records.

It is also important to take birth certificates and passports with you.

4. Do you have joint bank accounts?

In some circumstances you may have joint bank accounts, credit cards or an offset account attached to your mortgage. You should let the bank know that you have separated and regularly check the joint bank balances and redraw facilities.

If you are concerned that your partner may withdraw funds without your consent:

- a. you should contact the bank and request that dual signatures be required prior to authorising any withdrawal; or
- b. you should consider withdrawing a portion of the funds and placing them in your own account to preserve them.

5. Is your email secure?

To ensure privacy and prevent your personal funds being withdrawn, you should consider whether you need to change your email, internet and telephone banking passwords. This is particularly important if your situation is hostile, unsafe or if there is an imminent threat of litigation.

6. Should I change my will?

Separation does not revoke a will or your powers of attorney, only a divorce does. It is important that you obtain estate planning advice as soon as possible so that your partner cannot make decision on your behalf should you lose capacity. You should also obtain advice about any binding nominations in place with respect to your superannuation funds.

7. How do I discuss arrangements for our children?

It is important to try and remain as amicable as possible with your partner for the benefit of your child/children. Children often become caught in the parental dispute which is damaging to their long-term psychological health and well-being.

8. Keep a diary

It is important that you keep a diary of key dates such as when you first communicated to your partner that you separated and dates that the children have spent time with your partner or which the children have spent with you.

9. Keep your communication civil

In an electronic era, everything that is communicated to your partner by text, email, Facebook messenger or WhatsApp can be used as evidence. As a golden rule, if you would not want your partner's lawyer or a judge reading that communication, do not send it.

10. Get legal advice

Whilst you may never need a lawyer to formally act on your behalf, it is imperative to obtain initial legal advice regarding your separation. It is important you understand what your obligations are under the *Family Law Act 1975* (Cth) from both a property and parenting perspective.

What should I start to think about prior to obtaining legal advice?

Parenting Arrangements

If you have children, you should start to consider what arrangements would be in their best interests. You can anticipate that your lawyer will discuss the following concepts with you:

1. Equal shared parental responsibility.

Under the applicable legislation, there is a presumption that you and your partner have equal shared parental responsibility for your children. This requires you to consult with the other and make a genuine effort to reach a resolution regarding any major long term issues in relation to the children. This may include what school the children will attend, whether one or all should be seeing a psychologist or whether your baby should be baptised. Parental responsibility relates not to day to day decision making nor the amount of time the children spend with each of you.

2. The children's best interests

The best interests of your child/ren is the paramount consideration under the *Family Law Act 1975* (Cth). The Act sets out guidelines as to how the court is to determine a child's best interests, which is best met by encouraging a meaningful relationship between the child and both parents and

protecting the child from harm or being exposed to family violence. Protecting your child from family violence or harm trumps the meaningful relationship consideration.

3. **Parenting Orders and Parenting Plans**

A parenting order may be made between parents, grandparent or other relation of the child. A parenting order is a binding agreement between parties. A parenting plan is a documented agreement between parties, however, it is not binding before the Court, however goes to the parents' intentions. Parenting orders and parenting plans can address:

- a. The parent with who the children are going to live with;
- b. The time a child will spend with the other parent;
- c. Allocation of parental responsibility;
- d. Special occasions such as Easter, Christmas and Birthdays; and
- e. Communication between parents.

Under the Act, the court must consider whether the child/children should be spending equal time with each parent and if it would be in their best interests and reasonably practicable to do so.

Property Settlement

In preparation for a discussion with your lawyer regarding your property settlement, you should begin to consider the following steps and collate documents which support your position:

1. **What is your property pool made up of?**

Your property pool typically includes all assets, liabilities and superannuation owned by you and your partner jointly, individually or by a family trust or company. The court will consider making percentage adjustments regarding what you or your partner are to retain based on the next factors.

2. **Contributions**

The court will consider the contributions made by each of you throughout the relationship. These may be financial contributions including assets brought into the relationship or gifts during the relationship from external sources such as an inheritance.

The court will also consider non-financial contributions, such as the improvement of a property or working within a family business. The Court considers the contributions of homemaker and parent and primary income earner as equal.

3. **Your future needs**

The Court will consider the future needs of both you and your partner. Typically this includes health, age, income earning capacity, if there is an income earning discrepancy between you and your partner, and whether either of you has the care of or support of children.

4. **Holistic Assessment**

The court will finally contemplate whether the percentage adjustment that they have reached is just and equitable in all the circumstances. If they do not think that is the case, they may make a further adjustment.

What should I do next?

Our family law team is available to assist you with, initial advice, a negotiated settlement, mediation or litigation. Please get in touch with us to find out how we can assist you in taking the right step forward.

Or start online – If you are not quite ready to talk to a lawyer, Moores Family Law online assistant is designed to help you in your own space and time. The service is confidential and free, and allows you to get some initial answers tailored to your circumstances without needing to speak to a lawyer start [here](#).

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