



Separation & Divorce

Family
Law

Info
Kit

Separation and divorce is one of the most challenging life changes you can go through.

And while divorce can bring eventual relief, the stress from the breakdown of a marriage can be intensified by the acknowledgement of the relationship's end, and the division of assets and children.

Understanding the legal process will give you peace of mind and help you navigate this emotional period in a rational and objective way.

There is often a misconception that divorce is expensive. While costs can escalate depending on the situation, careful management and open lines of communication with your former partner will help contain the time and fees required to resolve the divorce.

Good to know

- ⌚ There are many factors to separation and divorce. Please feel free to contact us to discuss your matter in a no-obligation initial consultation so we can provide you tailored advice.

The law is on your side



At Altria, we provide advice you can understand, in a straightforward, clear and concise manner.

This fact sheet provides an overview of the process and factors to consider during separation and divorce.

If you require more details or wish to discuss your matter, please call or email us on Tel- (02) 9134 5851
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Separation & Divorce

TIMELINE

SEPARATION



Separate from partner

Minimum 12 months + 1 day

DIVORCE



File for divorce

Around 2 months to hearing



Court hearing

1 month after ruling



Certificate of Divorce issued

CHILDREN



Children being cared for

Requirement for the court to hear a divorce case

Child Custody

2 months to hearing



Interim hearing

Around 12 months to final hearing



Final hearing

Parenting Orders

1-2 months



Dispute resolution

Dependent on negotiations



Pre-action procedures



Parenting Orders

Can be heard in court if the parents do not agree

PROPERTY AND ASSETS



Pre-action procedures

File any time after separation, and within 12 months of divorce



Financial Agreement

(or)



Consent Order

Consent Orders are court endorsed and enforceable



Court hearing and final ruling

If required



Settle property and asset split

1. SEPARATION



The initial step is to formally separate from your partner. There is no legal filing required, although it is best to document your intent via written email or letter to your spouse. Begin to engage a lawyer to prepare for the eventual divorce.

TIMING

Separation prior to divorce filing takes a minimum 12 months and 1 day

2. DIVORCE FILING AND COURT HEARING



Divorce filing is processed via the Federal Circuit Court of Australia. It can be lodged as sole or joint application, and can be done online. Depending on your situation, you may not even need to attend court.

It takes around 2 months for your case to be heard

3. CERTIFICATE OF DIVORCE



If the court has determined the divorce to be legal, official paperwork will be issued via mail and the marriage formally dissolved.

The court sends a certificate 1 month later

4. CHILDREN



Child welfare: It is important that children are cared for during separation, and the court will seek a demonstration of this before your matter will be heard.

An interim hearing occurs around 1-2 months from filing paperwork

Live with and spend time with orders: There is a two-step process for child custody. First, an interim hearing is set to ensure that children are being adequately looked after during proceedings. Each party submits affidavits to the court to plead their case, but a ruling is not made at this time. The final hearing is held some time later, and this is when each former spouse is cross examined and evidence submitted for the court to make a final determination. This may include involving your children to meet with a court appointed counsellor.

It can take up to 12 months or more after the interim date for the final hearing

Parenting orders: The courts require prior consultation with appointed mediators to first find a resolution. If an agreement is reached, Consent Orders are drafted for filing. Should the parties be unable to reach agreement, they can submit to the courts for their case to be heard.

5. PROPERTY AND ASSETS



Prenuptial agreements: If an existing financial or prenuptial agreement is in place, this will be used as evidence to separate property and assets.

Separating assets: Property and asset splits are first required to be resolved outside of court as pre-action proceedings, and can then be filed with the registry. This mediation takes as long as required to document all assets and liabilities and reach a mutual agreement with your former partner. If an agreement is made, it can be submitted to the courts for a Consent Order. If an agreement cannot be made, then the matter can be heard by the courts. The timing and duration of this varies depending on your particular situation.

An application to separate property and assets can be filed any time after separation, and should be filed within 12 months of a divorce

Good to know

- ③ You don't need to provide a reason for divorce; you just need to demonstrate that the marriage has no likelihood of being saved.
- ③ You can still live in the same house and be legally separated. Separation can be gradual, and you need to declare you have not shared a bed, worked domestic chores together such as cooking, have not been intimate, and if you have informed family and friends (i.e. made the separation public).
- ③ A court ruling on divorce does not take into consideration financial or child custody matters. These are two separate applications and processes that can run concurrently to divorce proceedings.
- ③ De facto relationships have similar processes but with certain select differences in the steps undertaken.

Splitting up property and assets



What is commonly misunderstood is that a court ruling on a divorce is simply the legal split of a marriage. The allocation of asset splits between former partners is not considered without a separate application.

PRE-ACTION PROCEDURES

It is a requirement to seek agreement with your former spouse outside of court. It is important to retain a lawyer during this period to ensure you obtain what is rightfully yours from the marriage.

It is important to disclose the total pool of assets and liabilities as a couple, as well as the financial and non-financial contributions made while together. Future needs of each individual are considered too. The final result must be reviewed to ensure that it is just and equitable between partners, and the various transfers of ownership and payments can then be made. Agreements consider assets and contributions to the marriage, superannuation and spousal maintenance.

There are two options to resolve the matter out of court:

FINANCIAL AGREEMENT

The matter can be settled with a Financial Agreement and signed by both parties once they have each received independent legal and financial advice. You can consider this like any normal legal contract between two parties.

OR

CONSENT ORDER

Consent Orders are a legally binding contract reviewed by the courts that are filed with the Family Law Registry. You do not need to go to court, and they can be preferred due to the precedence of the court enforcing Court Orders.

Going to court: If you cannot reach agreement with your former partner, then the matter can be heard before a Judge or Justice in court. This is typically where costs can increase considerably, so it is worthwhile seeking to settle the matter outside of court as much as humanly possible. The court's ruling is final, and they will consider your situation on the day of the trial.

Children



Before the court will consider your divorce, proof that children are being looked after is required to be demonstrated. This can be remaining with parents, or other carers such as a family member. The arrangement does not need to be formalised.

Live with and spend time with orders take a two-step process:

1. INTERIM HEARING

The interim hearing is designed to put an arrangement in place that will protect the children from harm and maintain the current status of their relationships with the parents until the final hearing.

Each party submits sworn affidavits at this time to state their intention in the matter, but no ruling is made at this time.



2. FINAL HEARING

The final hearing is when the court will make a ruling on who receives custody of the children. During this process, each former partner is cross examined, and evidence is submitted and evaluated.

Your children may be required to meet with a court appointed counsellor, and this may also be used as evidence in court. Upon ruling, the court will make a final determination.

Parenting orders

Parenting orders can be submitted at any time, and can come from other individuals with concern for the children, such as grandparents.

Parenting orders can include:



Parental responsibility



The time and communication the child has with each parent



Where the child lives



Child maintenance

First, mediation is required with a family dispute resolution practitioner to try to solve the matter outside of court. If a mutual agreement cannot be reached, the matter may be submitted to the courts for final determination. In this circumstance a certificate is submitted by the mediator to the court to start proceedings.

Good to know



Disputes may arise after divorce, and it is important that orders are adhered to. Access to children, Spousal Maintenance and asset splits may need to be addressed if your former spouse is not acting per the mutual agreements or court orders made during the divorce proceedings.

Divorce is very personal.

Divorce can be a challenging time for everyone involved. While emotions can run high, it is important that the channels of communication remain open with your former partner as much as humanly possible. Doing so will greatly reduce your stress and fees incurred. Ensure you surround yourself with friends, and seek professional counselling if you need it.

It is wise to ensure everything remains documented and saved, so use email or text messages where possible to communicate with your former spouse. It is good practice to keep these communications objective. If and when necessary, your lawyer can be engaged to deliver and manage formal communications.

HOW MUCH WILL DIVORCE COST?

Divorce fees vary depending on your situation. While court fees are fixed, legal representation varies depending on several matters including child custody, assets and the ability to resolve matters in a timely manner with your former spouse outside of court.

You may also seek advice from accountants, financial planners and personal counsellors. Further to this, you should also consider the increase in living costs once you have separated.

Divorce Case Starter

Altria provides law on your terms. Our Case Starter lets you enter simple details to start the conversation with us so we can design you a bespoke pathway to a legal solution.

 [GO TO CASE STARTER](#)

How Altria can help you

From the initial sense of a marriage breakdown, Altria will be by your side to assist in navigating this difficult time. Altria has a team of leading lawyers experienced in the area of family law, who have the talent, commitment and empathy to lead and support you through your divorce.

- Documenting separation
- Informal and formal arrangements during separation
- Out of court mediation, document preparation and filing, as well as representation in court for divorce proceedings
- Consultation, advice and representation for child custody, Parenting Orders, and property and asset allocation
- An ongoing point of contact to ensure rulings are enforced

Contact Altria today on (02) 9134 5851, or email us at info@altrialaw.com