



YOUR GUIDE TO FAMILY LAW

Everyday Answers
by Kingston Lawyers

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ABOUT THIS BOOKLET

This booklet has been prepared for you as a practical, easy guide for those navigating separation, divorce and family law matters. It is designed to provide general, untailored advice to help provide you with some guidance during this stressful period.

We emphasise that this booklet is not legal advice and does not take into account personal circumstances. This booklet should not be relied upon as a substitute for obtaining current, professional advice from a qualified professional.

While it is helpful to speak with family and friends for support during this time, relying on informal advice from their experiences and opinions may lead to misunderstandings and decisions which may not be in your best interest.

Every family law matter is different. In our many years of experience in the Family Law jurisdiction we have achieved successful outcomes for our clients by taking a very individual approach to every matter.

Engaging a qualified legal practitioner will ensure your advice is accurate, relevant, tailored and adheres to current Family Law legislation.

PLEASE DO NOT HESITATE TO
CONTACT OUR OFFICE TO
ARRANGE A TIME TO TALK TO
A PROFESSIONAL ABOUT
YOUR SPECIFIC MATTER.

CONTACT INFORMATION

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ABOUT



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A divorce or separation can be one of the most stressful times in a person's life. Receiving the wrong legal advice can be both financially and emotionally devastating.

We act sensitively and responsively and take note of each client's unique individual circumstances as they journey through separation.

At Kingston Lawyers, we have over 25 years of experience ensuring that our clients achieve the best possible outcomes.

Please give us a call to schedule an in-person or online appointment. Our lawyers are ready to help you navigate the difficult journey at the end of your relationship.

YOUR FIRST STEPS

STEP 1. STAY CALM

Separation can feel overwhelming, but it is important to remember that there is life after divorce. The decisions you make now may have lasting effects, so it is best to avoid acting in the heat of the moment.

Instead, take time to think carefully about your options and together we will begin making practical, short-term plans that support your needs. It is also important to remain flexible, as circumstances can change and your plans may need to be adjusted over time.

STEP 2. LIVING ARRANGEMENT

Some couples separate while continuing to live under the same roof for a period of time, while others live apart straight away. The most important consideration is stability and safety.

If you have concerns about safety, including family violence, it is important to seek support immediately. Your safety, and the safety of any children, should always come first.

STEP 3. ACKNOWLEDGE YOUR SEPARATION

Separation occurs when one or both people decide the relationship has ended. You do not need to file any formal documents to be considered separated. What matters is the intention to end the relationship and acting on that decision.

4. SEEK LEGAL ADVICE

Kingston Lawyers are here to help you navigate through the difficult journey at the end of your relationship. Seek Legal advice early. This can help you better understand your rights, responsibilities, and available options, and support you in making informed decisions moving forward.

Kingston Lawyers will fight hard to protect your rights and know how important it is to advise people properly since the wrong advice can be very costly.

Before your initial consultation with us, it may be helpful to gather some basic financial information such as bank accounts, income, assets, debts, expenses, and superannuation. Having this information available can assist in making your appointment more productive and focused.

SEPARATION EXPLAINED

SEPARATION

Separation does not require formal paperwork.

Separating only requires you demonstrating that there is a clear intention to end the relationship and you act on that decision eg. you no longer live together, no longer function as a couple.

You can still be separated even if you are legally married. You do not have to get a formal divorce (if you are married) when you separate unless you want to remarry. However, staying married will impact your legal obligations.

Separating under one roof

“Separation under one roof” is when two people are separated but continue living in the same home.

For example, you may:

- sleep in separate rooms
- manage your finances separately
- no longer socialise together as a couple
- tell family and friends that you have separated

However, if you later apply for a divorce, you will likely need to provide evidence to show that you were genuinely separated during this time.



DIVORCE EXPLAINED

DIVORCE

Divorce is the legal process of formally ending a marriage. Divorce is dealt with under the Family Law Act 1975 and is granted by the Federal Circuit and Family Court of Australia.

To apply for divorce, you must demonstrate that your marriage has 'irretrievably broken down' meaning there is no likelihood of the relationship resuming. Additionally, you must be separated for a minimum of 12 months.

Overseas Marriages - Divorce in Victoria

If you married overseas, you can apply for a divorce in Australia as long as you meet the criteria:

- be an Australian citizen, or
- live in Australia and regard Australia as your permanent home, or
- ordinarily live in Australia and have done so for at least 12 months before the divorce application.

Divorce only legally ends a marriage. It does not address parenting arrangements, property and finances.



DE-FACTO EXPLAINED

DEFACTO

A de facto relationship is a relationship where two people live together as a couple on a genuine domestic basis but are not legally married.

In family law, de facto relationships are recognised in a similar way to marriages for many legal purposes, particularly when it comes to property settlement and financial matters.

There is no single rule, but a relationship is generally considered de facto if you and your partner:

- live together as a couple (minimum 2 years)
- share a domestic life (for example, finances, household responsibilities, and a shared home)

De-facto spouses are able to pursue property settlements and this will be discussed further later in this booklet.



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When parents separate, the law focuses on the children ensuring they are supported, safe and able to maintain meaningful relationships where appropriate. The law does not prioritise one parent over another. The law prioritises the child.

COURTS CONSIDERATION

The Court may consider the following factors in order to determine the best interests of the child:

- the benefit of the child having a meaningful relationship with both parents
- the need to protect the child from harm, including exposure to abuse, neglect, or family violence
- the child's views (this depends on their age and maturity)
- the child's relationship with each parent and other significant people (e.g. grandparents)
- each parent's ability to provide for the child's emotional and practical needs
- the importance of stability and routine

PARENTING AGREEMENTS

There are a few options:

- Oral agreement: informal, verbal arrangement between parents.
- Parenting plan: signed written agreement decided by the parents but not necessarily legally enforceable.
- Consent orders: written agreement approved by the court which is binding and enforced by law.



CHILDREN

PROPERTY AND FINANCES

A property and financial settlement is the process of dividing assets, money, and debts after a relationship has ended. This applies to both married and de facto couples.

Despite common belief, "Property" does not just mean a house. It includes everything either or both parties own or owe, such as:

- real estate (family home, investment properties)
- bank accounts and savings
- superannuation
- vehicles and personal items
- businesses or shares
- debts (such as loans, credit cards, mortgages)

All of these are taken into account when working out a fair division.

50/50 SPLIT?

Property settlements are not automatically split equally.

Like child arrangements, the law looks at what is fair in each situation. This may include:

- financial contributions (such as income and assets brought into the relationship)
- non-financial contributions (such as caring for children or managing the home)
- each person's future needs (for example, income, health, or care of children)

In Australian property settlements, financial and non-financial contributions are generally considered equally significant by the Court.

For example, a person who stayed home to raise children and manage the household has made a significant contribution, even if they were not earning an income. The law recognises that this role supports the overall functioning and financial position of the family.

Every relationship is different, and contributions can take many forms. Understanding that all contributions are recognised can help provide reassurance during what is often an uncertain process.

BINDING FINANCIAL AGREEMENT (BFA'S)

A Binding Financial Agreement is a private, legally enforceable agreement between parties that sets out how financial matters will be dealt with.

This can include:

- the division of property and assets
- responsibility for debts
- whether spousal maintenance will be paid

BFAs can be entered into:

- before a relationship (often called a “pre-nuptial agreement”)
- during a relationship
- after separation

Under the Family Law Act 1975, a properly prepared BFA can allow parties to finalise their financial arrangements without going to Court.



SAFETY AND SUPPORT SERVICES

Safe Steps Family Violence Response Centre

1800 015 188

- 24/7 help line
- Victoria crisis line for family violence
- Counselling, emergency safety planning and emergency accommodation

1800RESPECT

1800 737 732

- 24/7 help line
- National crisis line
- Sexual assault, domestic violence, family violence

The Orange Door

Bentleigh

973 Nepean Hwy

Bentleigh VIC 3204

1800 319 353

bpa@orangedoor.vic.gov.au



FAQ'S

- **1. How long will the divorce take?**

In Victoria, a divorce usually takes about 4-6 months from filing to finalisation if everything is straightforward. You must be separated for at least 12 months before applying. However, this is simply on average and each matter is different.

- **2. How much will this cost me?**

We discuss costs during your initial consultation and provide a clear cost agreement, including estimated fees so you know what to expect.

- **3. How will we divide the assets?**

There is no automatic 50/50 split. Property is divided based on factors like financial contributions, non-financial contributions (such as caring for children), and each person's future needs.

- **4. Can I take my children out of Australia?**

You generally need the other parent's consent or a court order before taking children overseas. Taking a child without permission can have serious legal consequences.

- **5. Can I change my child's name?**

Both parents usually need to agree to a name change. If there is no agreement, you may need to apply to the court for permission.

MORE FAQ'S

- **6. How does child support work?**

Child support is usually assessed through Services Australia using a formula based on each parent's income and the time the child spends with each parent.

- **7. At what age can children decide who they want to live with?**

There is no set age. The court considers the child's views, but decisions are based on what is in the child's best interests.

- **8. What happens to inheritance?**

Inheritance can be treated as part of the property pool, especially if it has been used for the benefit of the family. How it is divided depends on the circumstances.

- **9. Do I need to be divorced before I have a property settlement?**

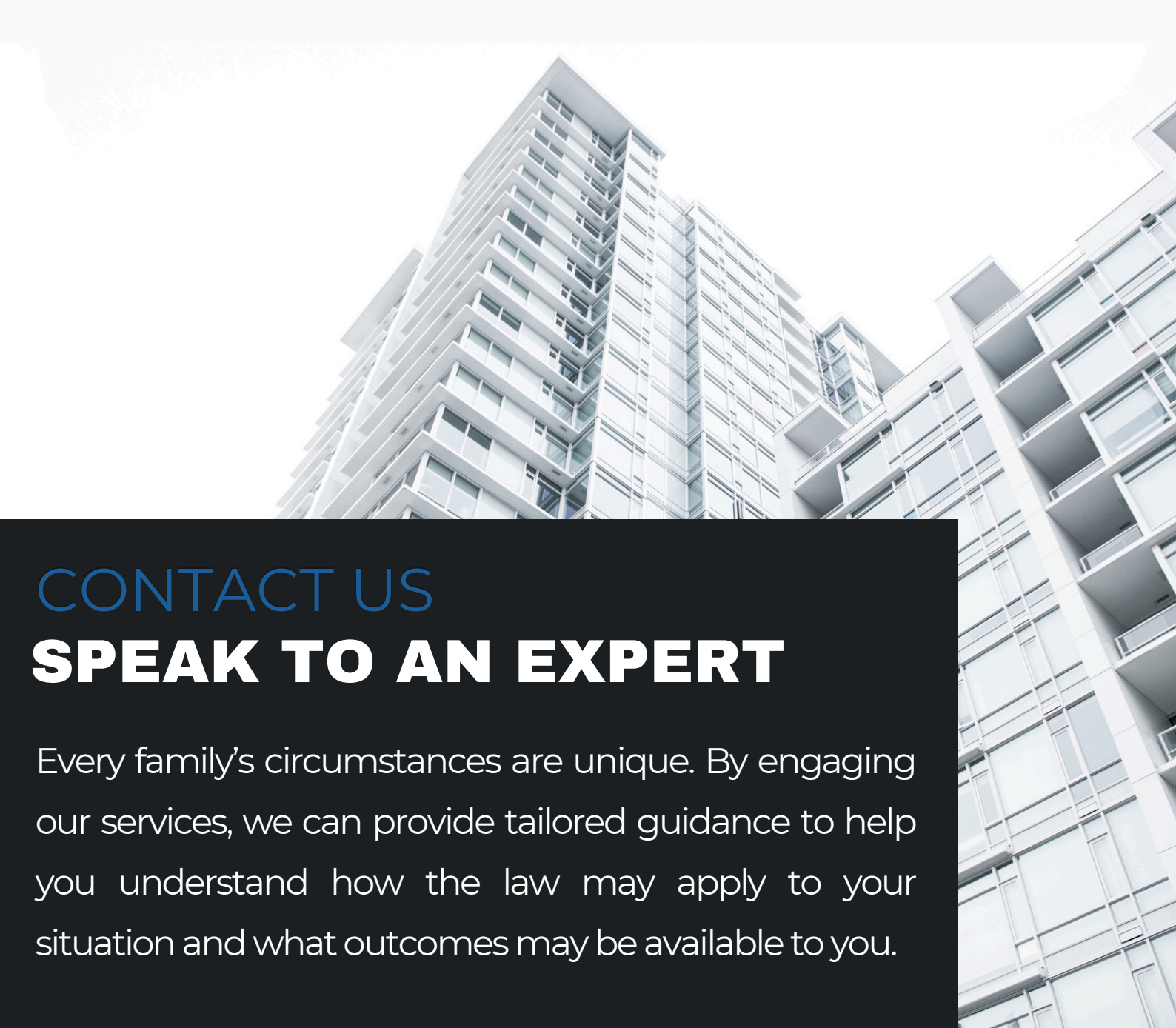
Property settlement can be finalised at any time after separation; you do not need to wait for a divorce.

- **10. Does cheating or an affair affect separation?**

Australia has a no-fault divorce system, so infidelity does not usually affect divorce or property settlement. However, it may be relevant in limited situations, such as where it has impacted finances.

Glossary Terms

Adjournment	A court decision to pause or delay a hearing to a later date
Affidavit	A written statement that you swear/affirm is true
Child Impact Report	A report prepared by a family consultant that assesses how disputes or arrangements affect a child
Child Support	Money paid by one parent to help cover the costs of raising a child
Consent Orders	Written agreement between parties that is approved by the court
Disclosure	A legal duty requiring both parties to honestly share all relevant financial information
Ex parte order	An order made by a court without the other party present (for urgent matters usually)
Family Dispute Resolution (FDR)	A process (such as mediation) where parents try to reach agreements without going to court
Guardian	The legal right and duty to make important decisions about a child
Hearing	A formal court proceeding where evidence is presented and a judge makes decisions
Interim Orders	Temporary court orders that apply until the final hearing or agreement
Mediation	A meeting with an impartial third party who helps people try agree on issues without having to go to court
Maintenance	Financial support paid to a former partner or child to help cover living costs
Undertaking	A formal promise given to the court, which is legally binding
Without Prejudice	A term used in negotiations meaning that what is said cannot be used against someone in court



CONTACT US

SPEAK TO AN EXPERT

Every family's circumstances are unique. By engaging our services, we can provide tailored guidance to help you understand how the law may apply to your situation and what outcomes may be available to you.



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