



Family Law and Parenting Matters

Matters relating to separation, divorce, the dividing of assets and negotiating parenting arrangements for children can be stressful and difficult. Often people are unsure about the future and what it holds. Many people want to ask about their entitlements, and about their obligations.

A good first step can be a talk with a solicitor experienced in Family Law. We can explain the relevant law and how it applies to your situation in a manner that you understand. We advise our clients on practical solutions to suit their individual circumstances.

We can also advise you on a draft Pre-Nuptial Agreement or Binding Financial Agreement, in contemplation of marriage.

We have developed a free booklet on family law issues, which includes information about legal and practical issues. You can get a copy of our booklet at your first appointment.

What should I do if I want to separate from my partner?

It is important to update yourself on the family finances including the superannuation, mortgage and bank account balances of both partners. This knowledge will help ensure that you get your fair share of the asset pool in your property settlement.

You should also consider meeting with a solicitor from Scammell & Co. prior to separation. We can advise you of your rights and provide an early estimate of how the law would divide the assets of the relationship. With this knowledge, you will be able to begin discussions with your partner with confidence.

Should there be any dispute, our solicitors can advise you. For example, on how the law approaches parenting arrangements between separated parents.

Will the children have to divide their time between me and their mother / father?

Depending on the ages of the children they will usually live with the parent who has been their primary carer and spend time with the other parent. Although responsibility for the children is generally shared equally between parents, this does not mean each parent has equal time with the children. There are many circumstances to consider in regard to the arrangements for the children. The arrangements may change as the children grow older. We will advise you on how best to protect your relationship with your children.



What if the children don't want to go with the other parent?

The Family Court considers that it is in a child's best interests to have a relationship with both parents. However, the Court would take into account the views of older children. Sometimes difficulties arise due to your work or other commitments. We can assist you to reach a satisfactory agreement suited to your individual needs. Where there is a history of violence or abuse, the Courts will seek to protect the children and special arrangements may need to be made.

What if I want to keep the house and care for the children?

Your lawyer will advise you how to negotiate a division of property that will best suit your preferred arrangements for the children, your employment and your future financial security. You will also be advised about child support payments and whether you may be successful in obtaining spousal maintenance.

What if I am being prevented from seeing my children?

We will assist you to negotiate an arrangement that will ensure you maintain a relationship with your children. It is in your children's best interests to have a good relationship with each parent even after separation, unless there are circumstances of violence, abuse or neglect. If needed, we can obtain a Court Order.

If I live with my partner who owns the house we both live in, do I have an interest in the house?

Your direct financial contributions to the mortgage as well as your non-financial contributions such as home-making must be considered when dividing property. It is therefore most likely that you will have an interest in the house. Scammell & Co. can assist you to determine whether you have a claim on your current or ex-partner's house.

Do I need a solicitor if I can agree a division of property with my partner?

Yes, you need a solicitor. You will remain vulnerable to future claims for property by your partner unless you have a Court Order or a legally binding agreement. If you are divorced, a property claim can be made within twelve months of your divorce.

While Consent Orders can be entered into without legal advice, you may be at risk if you agree to a division of property by Court Order without first seeking the advice of a solicitor. Legal division of property by Court Order is final and it is essential that you are fully informed of your entitlements and any potential disadvantages to you before entering into an agreement.

Property settlements can become complicated, especially where there is a diverse range of assets. You should not agree to a split of the property of the relationship without fully understanding your legal rights, the value of the assets of the relationship, the proposed division and the tax consequences.



Your solicitor can assist you to formally record your agreement through Court Consent Orders or a Binding Financial Agreement. Your Consent Orders or Binding Financial Agreement must be carefully drafted so that the effect you both intended is properly recorded.

Without a Court Order or Binding Financial Agreement your agreement would not be enforceable under the Family Law Act (Cth) 1975. Also, your agreement could be altered at a later date by a Court, to your disadvantage.

If I inherit money during my relationship, do I get to keep it all if we separate?

Not necessarily. The inheritance monies you had not spent by the date of your separation would likely form part of the asset pool for division between you and your partner. Similarly if you used the money to purchase assets, they would also form part of the asset pool. Careful estate planning prior to separation may allow you to maintain control over the inheritance. Scammell & Co.'s experienced solicitors can provide you with tailored advice on your particular circumstances.

Do I need a new Will when I separate?

Marriage itself revokes any Will that the parties had on marriage unless the Will refers to contemplation of that particular marriage.

People often separate but forget to change their Will. This means the former spouse inherits their estate and children or a later partner may miss out. It also leaves any new partner able to challenge your Will through messy and expensive Supreme Court proceedings. Potential for such conflict is best avoided by making your intentions clear in a new Will.

Whenever a married couple separate, each person should renew his or her Will, ensure they have appointed Powers of Attorney and Guardianship and if necessary, change the nominated beneficiary of their superannuation funds.

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