



Where to from here?

An overview of the legal matters to consider for your separation or divorce.

“ You will experience the sincerity and knowledge of our team. You will be comforted in knowing that we will make this process as easy as possible. ”



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The ‘D’ word

We often joke about the ‘D’ word (divorce) but for those of us who are, or have, experienced the breakdown of a significant relationship it is anything but a humorous experience. Divorce is an unpleasant experience and there are no winners.

A successful divorce, if ever there was such a thing, is not about winning battles but instead about resolving differences. You may be in the throes of a marriage or relationship breakdown, or at least considering that as an option; either way, this will not be an easy time for you or for those around you.

With now close to half of all marriages in Australia ending in divorce, and similar statistics for de facto relationships, more and more Australian adults are themselves experiencing the heartbreak that flows from relationship breakdown. The end of a relationship will bring with it a sense of loss. You may be prepared or entirely unprepared. It may be your decision or it may be a decision that is being unwittingly imposed upon you.

The decision to separate is not an easy one and everyone deals with this differently. Do consider obtaining professional assistance from family counsellors to assist you through this difficult time.

This guide is intended to provide you with information about the legal issues that may flow from the end of your relationship.

There will however be many other issues that you will have to navigate as you move through your divorce.

Every separating family has only two main legal issues to finalise-

Firstly, matters relating to the parenting of children; and

Secondly, the division of the personal wealth and income that exists at the end of a relationship.

Almost all of our clients are seeking the same outcome- a formal agreement in relation to their parenting or financial matters. It is the path that is taken to achieve that agreement that is where the differences lie.

Most adults are more than capable of making decisions that relate to their children and their money- in fact they do it every day; the breakdown of a relationship can however make these sorts of decisions very difficult for many people.

We are very lucky in Australia to have a very fair and open Family Court system. We have committed, intelligent and diligent lawyers and Judges who day in and day out assist families at very difficult times.

However, there are many 'better' options than the Court process for separating families to resolve legal differences. The Court process should be, for most Australian families, the place of last resort. It should be saved for those families that are at risk, usually as a result of family violence and abuse.

If you find yourself in the Family Court process you are in essence 'buying' a decision-maker; a person who knows very little about you and almost nothing about your values or goals in life; who will ultimately tell you how much time you will spend with your children and how much of your hard earned money you can retain. Most separating families can and do resolve their legal differences without venturing into the Family Courts.

At Brisbane Family Law Centre we will guide you through your separation and divorce. We will show you the range of options you have outside of the Family Court process to resolve your legal differences and formalise the necessary legal paperwork. More importantly, we will show you how you can focus on the values, goals and beliefs of you and your family, to ensure that you move out of your divorce and can maintain a new, positive and fulfilling life.

It will get better, just hang in there

We often hear from clients long after their legal matters are resolved. There is one common theme from those who 'have been there'. They all say- "It will get better, just hang in there". Divorce is said to be the second most significant grief process most of us may experience, second only to the death of a loved one.

Divorce rates in Australia continue to suggest that at least one-third to one-half of all marriages will end in divorce. Importantly, these statistics do not encompass the increasingly popular de facto relationships- those people in committed long term relationships that choose not to get married- which have a higher chance of ending in separation than marriages.

Relationship breakdown continues to affect a large number of us every single day. If you are either experiencing or considering divorce or separation, and there was only one piece of advice we could give, it would be this-

***“ Take the
time to pause,
to breathe and
to grieve ”***

Whether the end of your relationship was your choice or has been imposed upon you it is often no harder or easier. Either way you will feel fear, loss and sometimes anger. Decisions that are made when you are in this emotional state are often not well considered and can be regretted at a later stage.

Take the time to look after yourself- allow yourself to feel sadness, grief and anger but also educate yourself on how to move through these feelings.

Everyone will deal with this differently; you will have days when you are feeling on top of the world only to wake the next day feeling like there is no light at the end of your tunnel.

Like a lot of things in life, it will feel like two steps forward, one step back. Remind yourself of this- set small and achievable goals, day by day or week by week. Keep a journal to map your progress- not to record the terrible things you are feeling but the good things that are happening, there will always be something positive if you look hard enough.

Set yourself something in the near future to look forward to - it might be a holiday, a dinner out, a new hobby - just something that you know you will enjoy, that you can have in the back of your mind as something positive on the horizon.

Maintaining a sense of positivity in an adverse situation takes courage. You will need courage to move through your divorce;

but you will, and you will come out the other side perhaps a different person with a different kind of life.

This guide will give you general information on the legal aspects of divorce and separation. You should in addition seek advice specific to your circumstances from a specialist Family Lawyer.

Brisbane Family Law Centre (BFLC) is a family law firm that specialises in keeping separating families out of the Court process. After 14 years in the industry, our Director Clarissa Rayward, has seen firsthand the damage that can be done as a result of lengthy Court battles over issues relating to children and money.

Our aim is to help you achieve and maintain a co-operative relationship with your children and spouse, enabling everyone to move forward, and for you to start your new life please don't hesitate to contact our office for further information or to make an appointment to meet with one of our team.

The Court Process- An Overview

The best settlement options that couples reach tend to find a balance between their legal rights and entitlements and their own personal goals, needs and values. This balance is only possible with settlements that are reached through constructive discussion and negotiation outside of the Court process. Families that find themselves before the Family Courts are left with the pure application of legal principal. This will mean that very little importance will be placed on the goals and desires of the separating couple.

Every separated Australian couple, whether married or defacto, will find that the legal matters arising after the breakdown of their marriage are dealt with pursuant to the Family Law Act 1975 Cth ("The Act"). When the Act came into effect in 1975 it resulted in a significant change for our society in terms of how separation and divorce were approached. Most importantly, the 'no fault' divorce system was introduced. In essence, this means that there is no need nor benefit in trying to establish that a party to a relationship is at fault to seek a dissolution of a marriage. It is only necessary to show that there has been an 'irretrievable breakdown of the marriage'.

It is important to remember that we operate in a no fault divorce system as this idea flows through to the application of the Family Law Act in relation to both parenting and property matters. In short, it will rarely have any impact on the legal outcome of your property division or parenting regime if one or either of you has had an affair or otherwise acted in a manner some might consider immoral. This is important to understand and remember from the outset.

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***“ I’ve had
enough! I
will see you
in Court! ”***

Most of us have heard some sort of horror story about encounters with the family law court process. You and your partner can control how you engage with the legal system. While the Family Law Courts administer the Family Law in our country the vast majority (around 90%) of separating families never require the assistance of the Courts to determine their family law issues. So the odds are in your favour!

At **BFLC** we believe that you should do all that you can to ensure that your family steers well clear of our Court system. We are very lucky to have a Family Court system that is structured and contains Judges that are very skilled and knowledgeable. However, if you are entering the Court system we see only one advantage- you are buying a decision maker. You are paying a very large amount of money so that a stranger can make a decision about the things that are most important to you. While those strangers are intelligent, caring and wise people, they don’t have magic wands and are certainly not magicians. A Judge will carefully and appropriately apply their legal knowledge and principal to your case and make a decision about the matters you ask of them. While this might sound simple, it is not.

The timeframe

The process of getting into Court of itself can take some time. There are a series of documents that need to be filed to commence the process. Generally it will take 1-2 weeks for a lawyer to properly prepare the documents that are required to be filed. Once you have filed your documents it will take generally 8-12 weeks before you have your first day in Court.

The Court process will include a series of short hearings called 'mentions' as your Judge tries to ensure that they have the information required to enable them to ultimately make a decision at a 'trial'.

The trial is the big event. Everything in the Court process is about moving towards the trial. The trial will be the opportunity where you and your spouse present your legal arguments to the Judge, you will be cross examined by Barristers and ultimately the Judge will make a determination about the matters you have asked. Orders will then issue from the Court setting out how your finances might be divided or how much time your children will spend between each of you.

It will generally take at least 18 months to reach a trial. Once you have had your trial, which might last over a few days, you are unlikely to receive the Judge's decision for some time as they will generally 'reserve their decision' or in other words, go away and think about things before making a final determination. In some instances it can take a further 2 years after a trial to receive your decision.

The cost

It is almost easy to quantify the financial cost of the Court process in terms of the amount you might spend on legal fees. From beginning to end expect it to be at least \$50,000, each. That is very large amount of money and please note that the longer you are in Court, the higher you can expect that amount to become.

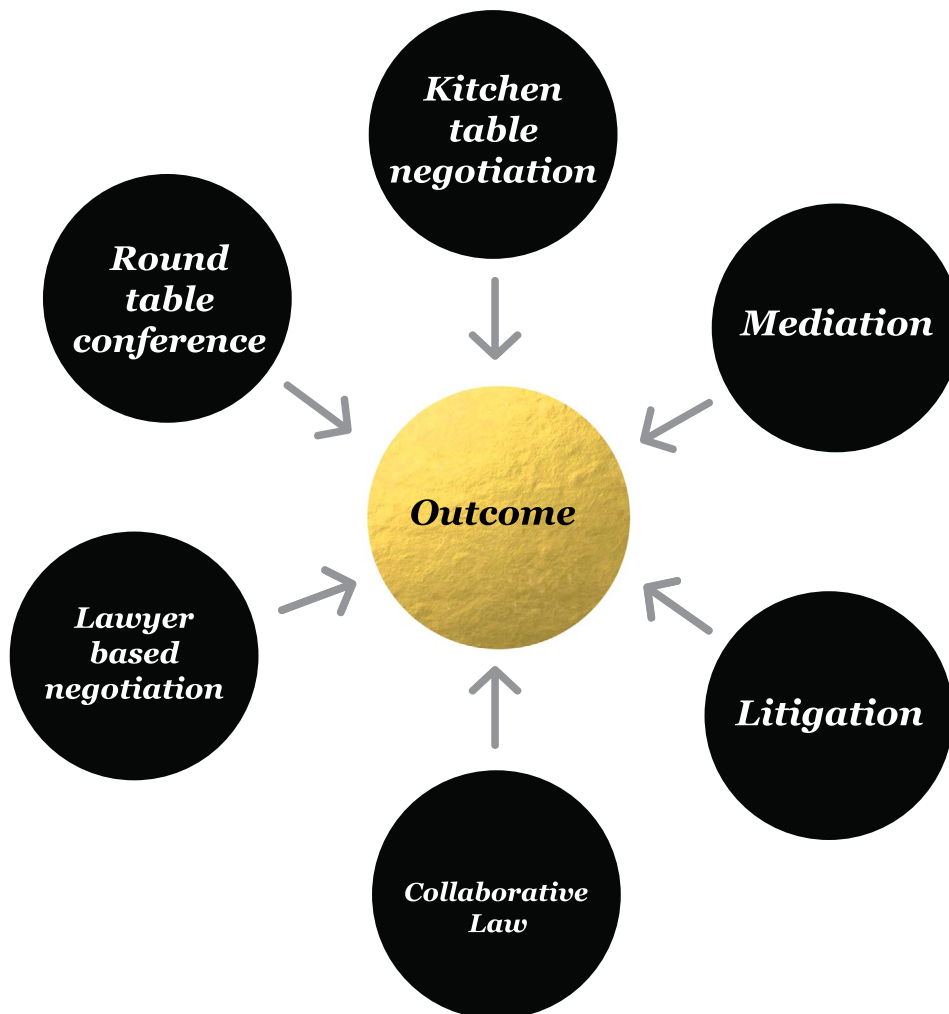
It is much harder to quantify the indirect financial costs and the significant emotional costs involved in pursuing your personal family matters in the Court system. Think about the cycle of grief- if you are fighting your former partner in the Court process for up to 4 years there is a very strong chance you will both remain in the grief cycle moving between anger and depression. These feelings will not be isolated to your legal issues, they will flow into all aspects of your daily life including your work and personal life and most importantly will impact on your children.

Why NOT Court

These are just some of the reasons that you should think carefully before deciding to go to Court. The financial and emotional costs are great. It is very unlikely that you and your spouse will have any chance of a friendship or good parenting relationship after a 3 day trial where your legal advisors have just done everything they can to destroy each of you and paint you in the worst possible light.

Perhaps the greatest risk of any Court application is the lack of control you have over the outcome.

We encourage you to seek other options, particularly Mediation or Collaborative Law, to resolve your legal affairs that will ensure that you and your partner are sitting in the driver's seat and in control of your settlement.



When it comes to parenting and the family law, keep in the front of your mind your children. There is no end of worldwide research that keeps telling us the same thing- children who experience the conflictual divorce of their parents during their childhood have a greater chance of experiencing poor adult outcomes later in life.

What is important to remember is that it is not the Divorce of parents that causes the harm to children, it is the conflict that flows. If you allow your children to experience whether overtly or subtly the conflict that exists between you and your partner, you are harming your children in a way that cannot be repaired.

If however you shield your children from harm, ensure they are sheltered from the adult disagreements and enable them to move fluidly between your households then it is unlikely that your divorce will have any lasting impact on their adult lives. This can only occur when you as separated parents maintain trust, and respect for each other.

“ For Better or Worse you will always be a Parent; and when it comes to sorting out your parenting arrangements, it does not matter if you were married or in a de facto relationship – the law is the same. ”

Arrangements for children after the separation of parents is governed by the Family Law Act 1975 (Cth). The same law applies for married couples and de facto couples.

Both the Family Court of Australia and the Federal Circuit Court of Australia deal with applications in relation to Children. The Federal Circuit Court was established in recent years to lessen the load of the Family Court.

The Federal Circuit Court now deals with the majority of applications in relation to children's matters. Both Courts apply the Family Law Act when determining arrangements for children after separation

When it comes to the legal considerations and your children there are 10 fundamental principles you should keep in the front of your mind.

10 Fundamental principles in relation to Children

- 1.** Ensuring that children have the benefit of both of their parents having meaningful involvement in their lives;
- 2.** Ensuring children are protected from harm;
- 3.** Ensuring that children receive proper parenting to help them achieve their full potential;
- 4.** Ensuring that parents fulfill their duties and meet their responsibilities concerning the care, welfare and development of children;
- 5.** That children have the right to know and be cared for by both of their parents;
- 6.** That children have a right to spend regular time and communicate with their parents and other people significant to their care, welfare and development including grandparents and other relatives;
- 7.** That parents should share in the duties and responsibilities concerning the care, welfare and development of their child/ children;
- 8.** That parents should agree about the future parenting of their children;
- 9.** That children have a right to enjoy their culture; and
- 10.** The Family Courts will only make orders that are considered to be in the "Best Interests" of children.

But I want Equal Time...

From July 2006 there has been a significant change in the way the Courts formulate living arrangements for children after separation

This significant change in the law saw the introduction of the presumption that both parents should share ***'Equal Shared Parental Responsibility'*** for their children. This means that parents should have, where appropriate, the ability to both make together important decisions in relation to their children for example health care and schooling. This presumption ***DOES NOT*** mean that children will necessarily spend equal time with each of their parents.

Instead, if a Court is satisfied that parents should have Equal Shared Parental Responsibility, equal time may then be considered. If Equal time is not appropriate the Court must then consider an order for significant or substantial time.

***“ I just want
the best for
my kids ”***

The paramount principle that the Court applies when considering arrangements for children is whether those arrangements are in the 'best interests' of a child or children.

What is 'best' for a child is perhaps another discretionary concept that two parents may or may not agree upon. The phrase 'best interests' is a legal phrase and the following is a list of factors that a Court will consider when determining if something is or is not in the 'best interests' of a child-

Primary Considerations

- 1.** The benefit of a child having a meaningful relationship with both of the child's parents; and
- 2.** The need to protect the child from physical or psychological harm or from being exposed to abuse, neglect or family violence.

Secondary Considerations

- 1.** Any views expressed by a child, taking into account the child's maturity or level of understanding;
- 2.** The nature of the relationship of the child with each of the child's parents and significant others including grandparents and extended family;
- 3.** The extent to which the child's parents have been involved with the child including undertaking their obligations to maintain the child;
- 4.** The likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from their parents or another significant person in the child's life;

- 5.** The practical difficulty and expense associated with a child spending time or communicating with a parent;
- 6.** The capacity of the parents to provide for the child including the child's emotional and intellectual needs;
- 7.** The maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents, and any other characteristics of the child that the Court thinks are relevant;
- 8.** If the child is an Aboriginal child or a Torres Strait Islander child, that child's right to enjoy their culture;
- 9.** The attitude to parenthood demonstrated by the child's parents;
- 10.** Any family violence involving the child or a member of the child's family;
- 11.** Whether it would be preferable to make an Order that would reduce the chance of any further litigation between the parents;
- 12.** Anything else that the Court thinks is relevant for that child; and
- 13.** Any family violence Order that applies to the child or a member of their family.

Our Top Ten Parenting Do's and Dont's

- 1. *Don't involve children in adult issues*** such as financial issues or personal issues between you and your spouse that have led to your relationship ending.
- 2. *Don't say bad things about your former partner.*** Children are a product of their parents. Children therefore understand that they are, in essence, half their mother and half their father. By slighting or denigrating a child's mother or father you are, at the same time, slighting that child.
- 3. *Every family is unique.*** Don't compare yourself to other families or friends in your situation.
- 4. *Don't believe everything they tell you.*** Children at all times should be sheltered and protected from any arguments and disputes between you and your former partner. Do not require your children to make decisions about things such as the time they will spend with you or their other parent or significant others in their lives. Children will feel torn and will often tell you things that they think you will want to hear to try and appease you and make you happy. Children often behave this way to try to show their love for you.

- 5. *Never communicate through your children.*** Using your children to deliver messages, no matter how unimportant, will make them a party to the dispute between you and your partner.
- 6. *Focus on yourself and not your former partner.*** Focus your attention on what you are doing, rather than what your former spouse is doing wrong; this will help you to move through this difficult period more quickly. Look for different ways to approach a situation. Rather than trying to change your partner try and change your own actions.
- 7. *Do not question your children about the time they are spending with your former spouse.***

Children do not have the same concepts of time that we as adults do, nor the same concepts of experiences. Whilst you might think that the information you are receiving from your children is accurate, it may not be and it is important not to leave them in the situation where they feel they are being questioned in depth about what they have been doing. Allow them to share their experiences with you, and if you need reassurance as to anything that they are saying to you, consider asking your former partner before anyone else to clarify any comments.
- 8. *A consistent routine will promote security for your children.*** If children living between two households have the benefit of consistency of routine between their homes, they have the best chance of feeling a sense of security, enabling them to enjoy all benefits of being a child.
- 9. *Focus on the good, not the bad.*** It is so easy to find things that are wrong in any given situation and yet at times so difficult to find the things that are right. When you feel that things are becoming really tough, stop, pause and think about two things that are going right. It is important to always be reminding yourself of the small successes in amongst what you may sometimes feel are many failures.
- 10. *Be flexible.*** Parenting in an intact happy relationship is hard work. Every day parents are shifting their own lives to try to ensure their children are given every opportunity to pursue their dreams and live their lives to the fullest. Nothing will change after your separation other than it is perhaps more difficult to manage the unexpected. Don't be afraid to be flexible and show understanding if your partner asks for variations to your parenting arrangements. You will no doubt need the same in return one day.

Managing the Costs of your children after your Separation

Parents of children have a legal obligation to maintain their children. In Australia, the Department of Human Services manages the assessment and payment of child support by parents after separation. Previously this agency was known as the 'Child Support Agency' and you will often hear people continue to refer to it in that way.

The payment of Child Support for all separated parents in Australia is determined through the application of the Child Support Act. This piece of legislation sets out a complicated formulae for determining the amount of child support that should be paid by one parent to another to assist with the costs of raising their children after separation.

The formulae takes into account a number of different factors including the number of children in your family, their ages, your incomes and how much time your children spend between you and your partner.

After separation either you or your partner can make an application through the Department of Human Services for an assessment of child support. It is not required that you do this and you are also free to make your own arrangements outside of the agency. There tends to be three main ways couples resolve their child support matters-

1. No formal arrangement-

Many separated parents have no formal arrangements in place for child support; they might agree on an amount that will be paid by one parent to the other or they might agree to each be responsible for particular expenses. Sometimes these parents obtain an 'assessment' of child support to use as a guide but don't require the assistance of the Department to collect or organise those payments. Often these parents have no involvement with the Department and simply make their own private arrangements.

2. A Child Support Assessment-

The majority of separated parents seek the assistance of the Department of Human Resources (Child Support Agency) to both assess the amount of child support that is to be paid and then to ensure that those amounts are paid. Some families will opt for a 'Private Collect' arrangement meaning one partner pays direct to the other while other families will opt for an 'Agency Collect' arrangement where the Department will collect payments on their behalf.

3. A Child Support Agreement-

This is a formal contract between you and your spouse that details the terms of your Child Support arrangements. These agreements are often used by parents who wish to have Child Support arrangements that are different to those that might arise as a result of a child support assessment. For example, if your children are attending at private schools, have special talents or needs then often these expenses are not captured by the regular child support assessment. Child Support Agreement offer a lot of flexibility to parents who wish to tailor their child support arrangements to suit their family.

“I just want the house!”

The division of your assets, liabilities and superannuation (and pretty much anything else with any value) after your separation is known as your ‘property settlement’.

A property settlement can be done at any time after separation, and in the case of married couples you do not have to wait until you are divorced.

There are, however, some important time limitations that relate to property settlement matters. If you are married, you have until 12 months from the date of your divorce to have either finalised your property settlement or to have at least filed an Application in the appropriate Family Court seeking Orders for property division.

Alternatively, if you are in a de facto relationship, you have only 2 years from the date of your final separation to have formalised your property division or to have brought the necessary Application. If you are outside of these time limitations, it is important that you seek legal advice immediately as this can have a significant impact on your legal rights and entitlements.

Property settlement law in Australia is governed by the Family Law Act. That Act is implemented by the Family Law Courts. The Courts consist of both the Family Court and the Federal Circuit Court and occasionally local Courts or Magistrates Courts in smaller towns.

There are a few important things to remember when considering a property settlement.

No marriage or de facto relationship is the same. There are so many different variables that impact on a property settlement, that it is very rare that the outcome in two separate relationships or two different families will ultimately be the same. Things like the length of the relationship, contributions that were made to it, the type of assets that are available for division and the financial future of the parties involved can create very different outcomes in similar circumstances.

The law is discretionary in this area
Unlike in perhaps personal injury law or some commercial disputes, the law when it comes to family law matters, including property division, has a discretionary element. It is this discretionary element that can make it quite difficult for lawyers to provide specific advice on this area. As such, you will find that your lawyer is likely to advise you on your property division outcome in a range of outcomes.

Balance in commercial realities.
A property settlement is ultimately the division of money or things worth money. The law in this area does create outcomes that are based on a percentage division of the overall value of the assets that you hold.

In our experience it can be common for parties in property settlement matters to become quite fixated on achieving a particular percentage outcome. For example, if you are told early in your matter that you will achieve something like a 70% outcome, it is unlikely that you will then want to settle for a 60% share of the assets that you hold. The difficulty is, however, that to achieve your 70% outcome you may need to pursue your matter in the litigation process, which may cost more than the 10% difference.

When receiving advice in relation to property settlement matters, always ask your lawyer to break down for you the costs involved in proceeding in a litigious or Court dispute, being both the financial costs, the estimated time and the likely impact on the assets that you will receive.

Think about the 'value' to you of the type of assets that you might receive in your final division. Take the time to get financial advice about how you can best structure your financial settlement to meet your needs. If you are 38 years of age there is little point in taking a settlement that includes only a large superannuation component when there might be more available assets such as cash or property. Look past the percentage division and to the true value of an asset to you.

The four step approach to determine Property Settlements

When determining a property settlement there are four legal steps to consider...

1 What do you have?

The Court must first determine what assets, liabilities and financial resources are to be considered in determining the property division.

In essence a *list of everything that you and your partner own* is created. It does not matter if your home is registered in your name, your partner's name or even a friend's name if you own it (or part of it), it will go on the list. This is also the case for debts and other liabilities.

The Court will also take the value of each of the assets as at the date you reach agreement or the date that you appear for a trial - not the date that you separated. This is very important to remember as the value of things you own could change over time.

2 How did you get it?

Secondly, the Court looks at the different 'contributions' you each made during your relationship. There are many different types of contributions such as-

- **Financial contributions** such as income or assets that you or your partner brought into the relationship
- **Non-financial contributions** such as unpaid work in a family business or an owner builder undertaking renovations to real estate
- **Contributions to the welfare of the family** such as the day to day running of the household and care of children.

Each relationship is made up of very different contributions and it is for this reason that the Court will look at each relationship on its own facts. There is no hard and fast rule.

3 *Other factors to consider*

The third step involves the Court taking into consideration a number of matters such as-

- Your age and state of health
- Your children, their age, their needs and who will be caring for them
- Your income, your partner's income and how this may be affected after the property settlement
- The effect (if any) that the relationship has had on your or your partner's ability to earn an income and obtain employment
- Any other matters the Court considers relevant in your relationship.

4 *Is the overall division appropriate?*

Finally, after weighing up contributions and all the other factors that are relevant to your case the Court will come to a decision (normally in percentage terms) about how your property should be divided between you.

There is no precise science to reaching a decision as every relationship is different, however the Court must be satisfied that the division is ultimately 'just and equitable'.

There is considerable difficulty in predicting with certainty the likely outcome of an application for property settlement without first having a lot of specific information.

We encourage you to meet with member of our team to discuss what outcomes might be appropriate for your family.

Financial Support for your partner after Separation

Separate to your property division there is sometimes a need in a family for one partner to provide financial support to the other. This occurs when one party to the relationship is unable to financially support themselves.

Spousal Maintenance can take different forms including-

- 1. Periodic cash payments*** for example \$250 a week or \$2,000 a month
- 2. Payments in kind*** including the payment of expenses on behalf of your partner including mortgage payments, utilities bills and other regular fixed expenses
- 3. Lump sum payments*** that are intended to meet that partner's regular living expenses for a period of time.

Spousal Maintenance is generally paid for a short and fixed period. It is not intended to be a payment that lasts forever but it is assessed on a case by case basis. Often spousal maintenance is paid immediately after a separation until the property settlement is effected. Sometimes it is paid for a few years after the separation to assist a spouse with caring for children or allow them time to be able to financially support themselves.

More couples seem to be choosing options that would have the person entitled to receive spousal maintenance perhaps receiving a larger share of the property division or some other form of lump sum amount so that the financial ties between them are severed. Regardless, spousal maintenance is an important part of the Family Law when it comes to financial matters. Not everyone will be required to make spousal maintenance payments or be eligible to receive them.

The legal test for spousal maintenance

To determine whether a person might be eligible to receive a form of spousal maintenance there are in essence two enquiries that will be made-

- 1. Does that person have need for spousal maintenance?*** To assess need the actual and necessary weekly expenses of that person are tallied. That amount is then subtracted from their income. In the event that their necessary expenses outweigh their income then that person can demonstrate a need for spousal maintenance.

- 2. Can the other spouse meet that need?*** If one partner has established that they have a need to receive spousal maintenance then the second enquiry is to assess whether the other partner has a capacity to meet that need. A similar exercise to that above is then undertaken- First considering the income of the paying spouse and subtracting their necessary expenses. If there are funds available at the end of this equation then it is likely spousal maintenance will be paid.

Spousal Maintenance is a complicated area of Family law. Do obtain advice specific to your circumstances. There are many advantages in receiving (and sometimes even paying) spousal maintenance. There are also disadvantages depending on your circumstances.

The path to agreement

Essentially, every family have similar legal issues to resolve after their separation. These generally fall into two categories, firstly financial matters and secondly parenting matters. It is the process or the path that you choose to take that is often where family law matters become complicated, expensive and difficult for those involved.

There are essentially six different ways that you can resolve your family law issues after your separation:

- 1.** You and your spouse can reach your own agreement, independent of any lawyers or other advisors. We tend to call this a ***“kitchen table” negotiation***, meaning that the two of you have either sat down or perhaps through email reached agreement as to how you may wish to divide your assets or perhaps the living arrangements for your children. This is a very cost effective way of resolving your issues, but it is essential that after you have reached that agreement, you seek legal advice to ensure that the agreement is then drafted into an appropriate legally binding document. This is particularly the case in relation to financial matters. We encourage you as much as possible to negotiate directly with your spouse and try to reach agreement on as many issues as you can.

2. Traditionally family lawyers are often engaged to assist in negotiating on your behalf with either your former partner or their lawyer to resolve your legal issues. This can be a very effective way of reaching an agreement. One of the difficulties with **solicitor based negotiation** is that you are often yourself removed from the negotiations. Further, this process can, at times, be quite lengthy. This is primarily because solicitor based negotiation will generally occur through email or letters between your lawyer and your spouse's lawyer. We encourage you to consider using solicitor based negotiation at the early stages of your legal process, but it is often more cost effective and timely to consider mediation or collaboration as alternate ways of resolving your disputes, rather than exchanging letters for a lengthy period.

3. An alternate form of solicitor assisted negotiation is what is termed a "**round table conference**". This is in essence a meeting which is confidential between you, your spouse and your respective lawyers to discuss and try to resolve your legal issues. In our experience, round table conferences are one of the most effective ways of resolving legal issues. You don't necessarily need to sit in the same room or even at the same table, but the presence of both you and your spouse in the same building at the same time can speed up discussions and negotiations and get to the heart of any disagreements very quickly. We strongly recommend that you consider a round table negotiation in preference to negotiation by way of correspondence. This does, however, require the participation of both you and your spouse and the agreement therefore of both your spouse and their lawyer.

- 4. Collaborative law** is the name given to a process of dispute resolution that is, in essence, a series of meetings between you and your spouse and your respective lawyers to discuss the issues between you and reach agreement. Essential to the collaborative process is the commitment by both you and your spouse, and your lawyers, to focus on settlement outcomes and not to threaten any legal proceedings. The commitment to settlement is what separates the collaborative process from, say, mediation or a round table conference. The collaborative process is particularly useful for families who are committed to protecting their children and maintaining a relationship as parents after separation. The collaborative process is also very useful in financial matters, as it offers significant flexibility and can offer parties the benefit of advice from professionals such as financial planners and accountants to ensure that their financial matters are settled in the most beneficial way for the whole family.
- 5. Mediation** is the term given to a process where an independent neutral person is engaged by you and your spouse to facilitate discussions between you and assist you to reach agreement. There are many different forms of mediation that are often used to assist families after separation. We strongly recommend mediation as a very effective way of facilitating agreements on family law issues for your family.
- 6. The Court process** is, at times, an appropriate path for resolution of family law issues. It should, however, be considered as your last resort, or only used in cases of emergency. The Court process can be used to seek Orders in relation to parenting and financial matters. Once your matter is before the Family Courts, it will take generally at least between one and two years before a final decision is reached by your judge. The Court process is both lengthy and expensive and you should seek specific advice to your circumstances before considering an application to the Family Courts.

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*Brisbane Family Law
Centre acted not only as
my legal team but offered
quality advice and real world
solutions to what could have
been a costly and lengthy
divorce if a more traditional
settlement approach had
been decided upon*

”

Put your cards on the table

Mediation is a cooperative decision making process in which qualified and impartial mediators help family members resolve their differences.

Why Mediation?

In our experience most matters that are properly prepared and proceed to mediation settle without the need for client's to file Court proceedings or attend at Court.

Mediation can therefore be a very cost effective method of reaching a settlement in both financial and children's matters. The structured process of mediation provides a safe and supportive environment in which each participant can have their say. Mediation is voluntary and confidential.

The Mediation process enables parties to discuss all issues, no matter how small, to reach agreement on all matters. This should be compared to the Court process where often the smaller issues are overlooked.

Mediation is also a speedy and cost effective way of resolving disputes and conflicts. It may also minimise the risk of conflicts in the future. The process can save or re-establish important family and parenting relationships and may prevent the need for legal action.

What happens at Mediation?

For a mediation to be an effective settlement tool time must be first taken to prepare your case. This may involve obtaining valuations of property and other assets or obtaining reports in relation to care arrangements for children.

Once your case is prepared a mediator will be agreed to, in consultation with you and your former partner. We recommend engaging a Senior family lawyer to mediate most disputes. You share the costs of the mediator with your former partner. The date will then be set for the mediation which is normally held at a neutral location.

Most mediations involving financial and parenting issues will last for a full day. It can be a tiring process and it is important to take the time to discuss the best mediation process for you.

Every family is different and the mediation process can be tailored to your needs. Both joint sessions and individual sessions will be held enabling you time to discuss issues and make every attempt to resolve disputes.

How can I best prepare for mediation?

Prior to attending mediation you should ensure that you have understood the advice we have provided to you as to your likely outcomes if your matter was to proceed to Court.

Agreements that are reached at mediation generally require parties to be able to compromise and see the 'bigger picture'. At least two weeks prior to your mediation you should meet with your Solicitor and obtain firm advice as to the range of outcomes that are likely in your circumstances.

You should also obtain specific advice on the likely financial cost to you in proceeding with a legal process if you cannot reach a resolution at mediation. When you are negotiating a settlement it is important to be aware of the costs that may be incurred if you are unable to reach agreement and have to proceed to Court. These costs may include both financial and emotional costs.

Before you attend at mediation make sure you know what your **best** and **worst** legal outcomes might look like. Also take the time to discuss your negotiation and settlement strategy with your lawyer prior to your mediation. You should attend knowing how your day at mediation will flow and be ready to make and consider any settlement proposals. Most importantly keep an open mind, remain positive and be ready to compromise.

Let's talk about it

Collaborative Practice is a relatively new method of dispute resolution where parties, their lawyers and other experts enter into a formal agreement to focus on settlement rather than litigation.

If it is important to you that your divorce is private, that you maintain a good relationship with your former partner and that your personal goals are considered- the Collaborative Process could be for you. If you choose Collaborative Law, you, your spouse and your lawyers, agree not to go to Court, or threaten to go to Court, in resolving your dispute. All involved also agree that if the process is not adhered to, the lawyers cannot represent your family in any subsequent, related litigation.

Collaborative Practice is different to traditional negotiation in that the majority of negotiations occur in meetings between you, your spouse and your lawyers where your differences are discussed and resolved.

In order to participate in a Collaborative Process both of you must be willing to each be open and honest and work together to find mutually agreeable solutions and ensure your settlement is tailored to your needs.

Why choose Collaborative Law?

Collaborative Practice offers you and your former partner an opportunity to discuss all issues, no matter how small, to reach agreement on all matters.

Collaborative Practice should be compared to the Court process where often the smaller issues are overlooked. Collaborative Practice is also a speedy and cost effective way of resolving disputes and conflicts. It may also minimise the risk of conflicts in the future.

Collaborative Practice offers a bespoke model for settlement of your family law issue. You can involve experts such as financial planners, accountants and child psychologists to give your family the best advice in your situation.

“The non-confrontational nature of the Collaborative approach worked for me”

How does it work?

In order to participate in the process you and your former partner engage lawyers trained in Collaborative practice techniques.

You each meet individually with your lawyers to identify the issues that are important to you. Then a number of meetings (generally fortnightly) are held with both you and your spouse and your lawyers.

The number of meetings that are required is entirely up to you and your former partner. This may also be affected by the complexity of your case. Once an agreement is reached it is generally formalised by way of Consent Orders or a Binding Financial Agreement.

Is my case suitable for Collaborative Law?

This is the ***right option*** if you both-

- wish to move forward and reach a mutually acceptable agreement
- wish to protect your children from any further distress
- are willing to be honest and open
- are focused on a holistic solution for your family

This is ***not the right option*** if-

- either of you seek revenge against the other
- you are looking for an 'easy option'
- either of you want to hide information from each other
- if there has been a history of domestic violence-you should seek further advice as to whether the collaborative process is appropriate for you

The Legal Documents you will need . . .

Almost all separating families will end up with almost the same ‘product’ at the end of their legal process- a formal document evidencing their agreement. Of course there are many different ways to get to this ‘product’, but it is important to understand what legal documents might be right for your family. We strongly recommend you seek legal assistance to finalise your parenting and/or financial issues.

The three types of Legal Documents:

All couples experiencing divorce and separation will end up with almost the same type of legal documents- there are three options-

- 1. *No documents*** at all and either a verbal agreement or often an exchange of emails or the like that sets out the terms under which a couple will deal with their parenting arrangements or financial matters; or
- 2. *Informal documents*** which might be a signed agreement drafted by the couple containing the matters that are important to them. Importantly, these documents rarely have any legal effect and can be more trouble than they are worth.
- 3. *Formal legal enforceable documents***
If you engage a family lawyer, they will assist you to obtain the necessary legal documents that will set the terms for either the parenting of your children or the division of your finances. Generally the legal documents take 2 main forms-

There are two main types of legally enforceable documents:

(a) A Court Order- A Court Order is a document sealed by the Family Law Courts. They can include parenting and financial matters. There are two types of Court Orders:

- i.** The first is called a 'Consent Order' meaning that you both have agreed to the terms of the Order. Once agreed, the Consent Order is drafted, signed and delivered to a Family Court who will make the order. This is a procedural step and you will not need to attend Court for this to occur. It is not necessary for you to have the assistance of a lawyer to prepare or advise on a Consent Order although it is recommended.
- ii.** The second type of Court Order is made by a Judge at the end of a Court hearing. In this scenario the couple involved have not agreed to the terms and have sought the assistance of a Family Court Judge to determine matters. Sometimes families

wait some three or more years to achieve a final Court Order and spend the equivalent of a small house in legal fees to obtain the very same document that can be obtained by agreement. If you are asking the Court to make an Order you will have limited control over the terms of that Order. You will also have limited control over the time it might take to obtain that Order and the legal costs involved.

- (ii) A Binding Agreement-** The second type of formal legal document is in essence a contract between you as a couple. When drafted correctly this contract is binding on you both. There are different types of binding agreements that can be made, depending on your circumstances. Binding Agreements can be used instead of a Consent Order as mentioned above. Sometimes couples don't want the formality of a Court Order, for other couples a binding agreement ensures them the utmost privacy as no documents are lodged with the Courts. Another advantage of these types of agreements is that they can offer significant flexibility as to what can be included. In contrast, for a Court Order to issue, its terms must meet the relevant legal principles.

There are three types of Binding Agreements:

- 1.** You can document agreements relating to your children into a '**parenting plan**'- that is a document, signed by parents that contains matters relating to the parenting of children. A parenting plan is not enforceable in the way that a Court Order can be. However, a parenting plan has significant legal effect and must be considered by a Family Court if that Court is later asked to make parenting Orders in relation to children.
- 2.** For financial matters such as the division of your property or splitting of your income you can use a '**Binding Financial Agreement**'. This is a binding contract between you and your spouse. These types of agreements are most commonly known as 'pre-nuptial agreements' but they can also be used at the end of a marriage or de facto relationship to document in a legally binding way the division of assets and income. Binding Financial Agreements can also be used where a couple is seeking to divide their finances in a way that is outside of the range of normal legal outcomes. In other words, a couple have agreed upon an arrangement that is outside of what a Family Court would consider appropriate in the circumstances of that case.

Binding Financial Agreements are a helpful tool in many settlements however you both must have received independent legal advice on their terms for them to be binding. As such, they are not a document you could properly prepare and finalise without the assistance of lawyers.

- 3.** Another form of Agreement that is commonly used by parents is a '**Child Support Agreement**'. This is a contract between parents setting out how they might manage the financial aspects of raising children. There are two types of child support Agreements- A '**Limited Agreement**' and a '**Binding Agreement**'. A limited agreement offers flexibility for parents who don't want to commit to long-term agreements. A Binding Child Support Agreement however will bind parents for the term of the agreement or generally until the children attain the age of 18 years. Parents wishing to enter into a Binding Child Support Agreement will need independent legal advice about their agreement before it can be signed.

There is no 'one size fits all document'- Every family is unique and therefore every settlement document will be in its own way different. Do seek specific legal advice to determine which of the above might be best for you.

“

*It's hard to believe
it was almost 2 years ago that
the journey started and I really appreciate
all the tremendous guidance and support
you have provided over that time.
You have been a key part of making
a hard time a lot easier.*

”

Your Lawyer the Shark...?

There is a perception for many separating adults that when hiring a family lawyer they need to find someone who could perhaps be best described as a “legal shark”. Historically and in the media, lawyers are often portrayed as cunning characters, obviously smart but not always with any sense of emotional understanding.

Finding the right family lawyer for you is perhaps similar to finding a doctor when you are suffering from ill health. You will be confiding in your family lawyer and sharing with them some of your innermost secrets that you are unlikely to share with your family or friends. It is therefore essential that you find a lawyer with whom you feel comfortable.

We like to think that the best family lawyers in our industry are anything but shark-like. They don't lurk in the shadows, they do anything but. They swim with their clients in the shallow waters, supporting them, sharing the load and guiding them down a well chosen path. A great family lawyer is not going to chop off the limbs of either their client or a former spouse. Rather, they will find a way for both parties to a failed relationship to move forward into their new separate lives, with all of their limbs, dignity and hope intact. They do this by using skills that are anything but shark-like – compassion, creativity, understanding and knowledge.

A few things to keep in mind when choosing your family lawyer:

A referral from a close friend, colleague or trusted confidant will more often than not be a great place to start.

If you do not have the benefit of such a referral, it's time to **start researching**. Family lawyers can obtain a qualification in Australia denoting them as Accredited Specialists in the area of family law.

We strongly recommend that you **engage an Accredited Specialist** in the area of family law. Solicitors who have achieved this qualification have undertaken extensive study and assessment. This is a good first screening tool to identify a lawyer with expertise in this complicated area.

A list of all of the Accredited Specialists in each state can be found by searching your local Law Society.

However, there are many great family lawyers who are not formally recognised as Accredited Specialists. We recommend that you try to find a family lawyer who specialises, in other words primarily practices, in the area of family law in Australia.

Once you have a short list of possible lawyers, it is time to consider further research. Sit and think to yourself what sort of lawyer you are looking for. Have a look at the various lawyers' websites. They should give you a good indication of the type of law that the firm and lawyer is practicing.

Ring the various law firms involved, ask information of their administrative staff about the lawyers in their firm, their level of experience, their style of practice, how they charge and how they communicate with their clients.

If you are focused on keeping your family out of the Court process, ask the firm whether they undertake mediation, collaborative practice or other common forms of dispute resolution. If the firm is unable to provide you with information about those forms of dispute resolution, it is unlikely that they are focused on keeping your family out of the Court process.

Most firms will offer an initial appointment for clients at a reduced fee, often referred to as an “initial consultation”. Find out the cost of such an appointment before attending. Ask the administrative staff what information you should bring to the appointment. Ensure that you know where the office is that you’re attending, where parking is and that you are comfortable that you have time to get to the appointment.

An initial consultation will give you the opportunity to gauge if that lawyer is the right fit for you – did they understand you? Did they listen to you? Could you understand them? Were they patient and understanding? If you didn’t feel this was the lawyer for you, don’t be afraid to have another initial consultation at a different firm, until you find someone you can comfortably work with.

“

*The BFLC Team
was responsive and extremely
professional in dealing with my
complicated case. Superb solicitors
with the trust and personality
that you would expect
and deserve.*

”

“

*Whilst the
collaborative process
involves negotiation,
the team at BFLC has
always protected my
interests.*

”

“

*Firstly, you
listened to me and
gave me hope. Then
came the action and
now the hoped-for
result is happening.
Thankyou.*

”

A Will is not always a dead giveaway...

Making a Will and Power of Attorney can be easily placed at the bottom of your never ending to-do list.

You may be tempted to prepare a Will or Power of Attorney without the assistance of lawyers, on the assumption that your circumstances are “straight-forward” or “simple” and that by doing so, will help save you costs. However this is fraught with danger as your homemade will kit may not be valid or legally enforceable when the time comes.

We understand that discussing what you want to happen on your passing or in the event of incapacity, in addition to your family law matters, can be an overwhelming and unpleasant experience.

You may feel like it can wait and that it is an unnecessary task for your immediate future. However, divorce has the ability to revoke an existing Will and Power of Attorney, so it is crucial to obtain legal advice early on and ensure your estate planning documents accurately reflect your current circumstances.

It may be necessary to update your estate planning documents as soon as possible post-separation and then again once your divorce and/or property settlement is finalised.

Failing to do so may cause major problems for your estate and your loved ones down the track. In the worst case scenario, your Will could be found to be invalid by the Court meaning your estate could be distributed under the rules of intestacy and ultimately go to people whom you did not wish to benefit in the first place.

On the other hand, if you were to lose capacity without an operative Enduring Power of Attorney in place, then it would be left to your loved ones to make applications to the Guardianship Tribunal to act as your attorney; or a government agency (such as the Adult Guardian or Public Trustee) may step in and act on your behalf.

These issues can be easily removed by simply engaging a professional to assist with your estate plan before it is too late.

Why not –

- Review your current Will and Power of Attorney (if you have one);
- Consider if it is still relevant to your current situation;
- Call us now to arrange updating your important Estate documents.

How to be happily divorced

1. *Think before you act, but always act calmly.* Stop and think before you act, particularly if you are being asked to make a big decision. Try and be aware of moments when your emotions are getting the better of you and seek assistance from professionals, friends and family to keep you in check. Know your strengths and weaknesses.

2. *Listen twice as much as you speak*
When you are being asked to communicate with a former lover about issues that are very important to you, it is perhaps the worst and yet most important time to practice the concept of listening more than you speak. By listening we mean more than just hearing the words that are being said. You need to listen to the issues, concerns and fears that sit underneath those words.

3. *Don't believe everything you hear*
Whilst listening is incredibly important, don't always believe every single thing that you hear. Be careful to consider all the information you receive and carefully consider whether that helpful tip from a stranger really will assist you at all.

If you are able to listen but also assess why something is being said by those around you, including your children, you will be best able to move through your divorce with minimal conflict. Children often say things that are very important and should be given much credence, but just like you, children are trying to navigate the tricky world of separation. They too will say things without the meaning that is perhaps later interpreted by adults who are carefully listening for signs that their children's wellbeing might be being affected by their divorce.

4. *Let a few goals go the keeper*

This concept is useful in many areas of life, but it is so important during your divorce. You don't have to always be the last one to have your say. It also does not matter if you 'give in' on a few things that are perhaps not so important to you but more important to your spouse. Work out what really matters to you and focus on the big picture- if it is really important to you that you are able to share in the costs of your children pursuing their dreams then don't seek an accounting from your spouse of every cent that you have each spent that month on tennis lessons, uniforms, rackets and balls. Swings and roundabouts as they say!

“ You will need courage to move through your divorce, but you will, and you will come out the other side perhaps a different person with a different kind of life ”

5. *Look to the future and not the past to find your 'silver lining'*

A divorce is a good time to try to find your 'glass half full' attitude. No doubt it won't be there every morning but if you can spend some time each day finding something positive, you will move through your divorce with a lot more ease than some.

There is little point in re-living the past- this often leads to apportioning blame for your failed relationship. Accept your role in things, know that you and your spouse may never see eye to eye on many things but start to plan your life into the future. Give yourself something to look forward to. Do something you always wanted to do but never could before. And remember, your life has changed and that may or may not be your decision but either way life is precious and we need to make the most of every single minute.

“

*Sometimes good
things fall apart
so better things
can fall together*

”

- Marilyn Monroe -



Get In Touch!

**Argyle Place, Level 2, Unit 27/14
Argyle Street, Albion, QLD 4010**

**07 3862 1955
hello@bflc.com.au
bflc.com.au**

