



# YOUR FREE GUIDE TO EMPOWERING YOUR FUTURE

---

beyond divorce

# WELCOME

Getting divorced is tough. You're confronted with major decisions that will affect your future, and you need to make those decisions at a time when you may feel least able. You need a divorce lawyer who's sensitive and understanding about your situation.

Knowledge is power and our guide is designed to help guide you through this challenging time by providing you with the information you need to empower yourself towards an independent future.



## 03

How to choose your family lawyer

## 04

How does Property Settlement work?

## 07

Parenting Plans vs Parenting Orders

## 09

Child Support - who is responsible?

## 10

Spousal Maintenance - what the court considers

# HOW TO CHOOSE YOUR FAMILY LAWYER?

## **Make sure your Solicitor knows family law inside and out**

---

Do your homework and find out how much experience your chosen solicitor has in family law.

## **Do you need a Solicitor with a unique specialisation?**

---

If your issue is somewhat complicated, you may feel more comfortable speaking with a lawyer who specialises in that area of law.

Don't be afraid to ask questions. Effective family law solicitors should be ready to answer any questions you might have, so make sure to bring your queries to your initial meeting.

## **Don't let cost be the deciding factor**

---

All too often, people look at a law firm's fees and decide against their legal services. Whether they think the services are too expensive or perceive quality to be inextricably linked to cost, something about the fees deters them. However, cost isn't the only factor you should consider when selecting a family lawyer.

## **What are their values?**

---

Some lawyers have a bold, cut-throat approach to cases, whereas others focus heavily on collaboration and mediation. It's important to find a solicitor whose values and approach align with your own.

## **Is your lawyer promising outcomes?**

---

If your solicitor promises specific results, be very wary. Even the best family court lawyer can't predict the outcome of a legal matter. Your solicitor may give you their opinion or an idea of your chance of success, but they should never promise a win.

## **Check online reviews**

---

A quick Google search will turn up plenty of reviews for you to read through.



"Maggie has been my family and my solicitor for a number of years - in all that time, I have found her to be professional, hardworking, honest and respectful. She has shown compassion, empathy and helped my family through the toughest times when we needed it most. Helen"



# PROPERTY SETTLEMENT

For many people, property settlement is one of the most stressful aspects of the separation process. We have found that most of the stress and anxiety comes from a lack of understanding of how property settlement works. That's why our property settlement lawyers are here to unpack the process and help you go into negotiations feeling confident. We are committed to helping you through your property settlement after separation to attain the best possible outcome.

## HOW DOES PROPERTY SETTLEMENT WORK?

While divorce and property settlement are all generally considered inextricably linked, they are two separate legal processes. As soon as you and your partner separate, you can begin discussing the division of assets.

***There are a few ways you can go about deciding on property settlement after separation:***



### **Mediation.**

If you prefer to keep your property settlement out of the courts, you can instead try mediation. You can both seek legal advice to ensure you get the best outcome, but you won't need to take the matter to litigation unless the mediation is unsuccessful.



### **Negotiation.**

Another alternative to litigation is negotiation. It's a slightly different method of property settlement as you'll need to enlist the services of a Solicitor. This is an option for those who think mediation may become far too emotionally charged.



### **If you agree on your property split...**

You can get a formalised property settlement agreement from the court consent orders.



### **If you disagree on your property split...**

You can apply to the court for financial orders, including orders relating to the division of property and payment of spouse or de facto partner maintenance. The court will use its four-step process to determine the most just and equitable way of dividing assets.

# PROPERTY SETTLEMENT FAQs

## When should I start the property settlement process?

You can begin discussing settlement as soon as you separate. The sooner you start negotiating, the sooner a resolution can be reached.

## How is it determined who gets what in a property settlement agreement?

The court uses a four-step process to determine the best way to divide assets between two people.

1. First, each party needs to agree on the assets and the debts.
2. Second, both parties will consider the financial and non-financial contributions.
3. Third, factors that will affect individuals in the future, such as income and child custody arrangements, are considered.
4. Fourth, the outcome is assessed to ensure it is both just and equitable.

## How does property settlement become legally binding?

To ensure the property settlement is adhered to, your Solicitor can either file the terms with the Federal Circuit and Family Court of Australia (FCFCOA) or draw up a binding financial agreement.

## Do I have to tell my ex how much money I have?

Both parties are legally obliged to disclose all relevant information to the court, including financial information such as bank statements, superannuation statements, tax returns, and tax documents. Failure to disclose relevant information could result in a case dismissal, a fine, or being found guilty of contempt of the court.

## What assets are considered in property settlements?

Property may include:

- Bank accounts
- Family Trusts
- Investments
- Inheritances
- Vehicles
- The family home
- Investment properties
- Insurance policies
- Superannuation
- Shares
- Businesses
- Jewellery
- Cash
- Debts including mortgages, loans, credit cards and personal debts

# PROPERTY SETTLEMENT FAQs

## How long do I have to commence property proceedings?

If you are married and not yet divorced, there is no restriction on time limits. However, if your divorce is final, you have 12 months from the date of finalisation of your Divorce to commence property settlement proceedings.

## Can I still apply to the Court for property orders if I was in a de facto relationship?

Yes. The Family Law Act 1975 contains mirror provisions that apply to both married and de facto couples.

## Who is responsible for paying the mortgage after separation?

If a mortgage is in both names, both parties are legally responsible for mortgage repayments. If you can't continue paying mortgage payments, have a chat with the Orman Solicitors team, and we'll help you work out your next steps.

## Why is Superannuation considered in the property settlement?

Under the Family Law Act 1975, superannuation falls under the definition of property and can therefore be dealt with in the context of property settlement.



# PARENTING ARRANGEMENTS

Separation is a difficult and emotional time for everyone, but it is vital that steps are taken to reduce the impact on children involved. It is important to consider what arrangements should be made in relation to the children when a relationship breaks down. Generally, after separation both parents retain equal share of parental responsibility, but in some cases where an agreement cannot be made between the parents, a Parenting Plan or Consent Order is established in court. When establishing parenting agreements, the main focus is on "the best interests of the child/ren", as opposed to the parents. Every family is unique, with individual concerns and questions in order to reach an agreement.

## What is a Parenting Plan?

A parenting plan is an agreement between parents that is drafted in the best interests of their child/ren. With the child/ren's future in mind, the document is a shared commitment from both parties that details the practical issues of parental responsibilities. It is not compulsory to have a co-parenting agreement in place, but it helps separated parents avoid parental conflict and prevents any issues that may arise surrounding the welfare of the child/ren.

## What is the difference between a Parenting Plan and a Parenting Order?

Both documents detail parental guidelines and agreements dealing with the child/ren's best interests; however, a parenting order differs from a parenting plan as it is legally binding. Where there are no legal repercussions for breaching a parenting plan, a parenting order is a legal document that can be enforced through the courts if breached.

Additionally, a parenting plan is generally settled by parents and without legal proceedings, whereas a parenting order is determined with the help of a judge through the relevant court. If parents wish to alter a parenting order, they must submit new consent orders that reflect the alterations they want made to the courts; both parties must agree to the new terms or a court will determine them. Furthermore, like other child custody arrangements, parenting orders remain until the child/ren turns eighteen years old.

## What the court considers when deciding Parenting Orders:

- Protecting the child from family violence and child abuse
- The child's wishes
- The child's relationships with each parent
- Maintaining the child's relationships with important people in their lives
- Logistics of where and with whom the child should live
- Logistics of how much time the child is to spend with each parent

### NOT ENFORCEABLE:

- An oral agreement
- A written parenting plan

### ENFORCEABLE:

We recommend a formal court order known as a:

- 'consent order' or a
- 'parenting order'

We have extensive experience in dealing with this complex area of law, and can provide you an empathetic and practical approach to determine the best way forward for your family.

---

# WHAT SHOULD I INCLUDE IN A LEGAL PARENTING PLAN

There are many things parents should consider when putting together the most suitable parenting plan for their children. For the arrangement to be practical, however, it's important to have your parenting agreement contain the following:



## **PARENTING METHODS**

Styles of parenting both parties agree are best for the child/ren.



## **PARENTING RESPONSIBILITIES**

This could be as simple as deciding which parent will escort the child/ren to extracurricular activities such as sports practice or choir.



## **MAJOR DECISIONS**

Both parties should agree to collaborate on all major decisions regarding their child/ren's best interests.



## **FINANCES**

Shared/split/independent costs concerning raising your child/ren.



## **EDUCATION**

This might include schooling options, tutoring, afterschool programs, daycare, etc.



## **HEALTHCARE**

Can be everything from costs to the preferred practitioner.



## **LIVING ARRANGEMENTS**

Where will the child/ren primarily live, and with whom?



## **CONTACT WITH CHILD/REN WHEN APART**

It's essential to note guidelines surrounding parental contact with child/ren while staying with the other parent.



## **GUIDELINES FOR PARENTS**

For example, how each parent will communicate with each other and when. Plus parents should agree on who the child/ren will have contact with from family and friends.



## **SAFETY OF THE CHILD/REN**

What can parents do to ensure the safety of their child/ren.

As you can see, child custody and parenting agreements can be complex. When trying to navigate these issues, it is best considered with legal help. At Orman Solicitors, we're passionate about children's matters, and our team is dedicated to helping support families through challenging and uncertain times.





# CHILD SUPPORT

**Even after separation, it is expected that both parents are financially responsible to support their children.**

Within Australia, child support is regulated through the Child Support Agency (CSA). It is legally required that both parents provide adequate financial support to their children until they reach the age of 18 - this can include biological or adopted children of a married or de facto couple, and in some circumstances step-children.

The amount of child support can vary depending on the income of the parents involved, and the child's living arrangements, but is most commonly paid in regular periodic payments as determined by and distributed via the CSA. To determine how much child support is paid, who pays the child support to the payee, and who receives the child support from the payer, can be a complicated matter.

Unless separated parents can come to a private agreement, child support amounts and details are calculated by the Department of Human Services, and regulated by the CSA.

It can be difficult to get information in relation to your particular situation, especially as CSA staff are not able to provide legal advice and are restricted in what information they can provide.

## **Our team can assist with:**

- ✓ Negotiating financial child maintenance agreements
- ✓ Applying for a child support assessment
- ✓ Opposing a child support assessment if you believe incorrect information has influenced the decision - this is extremely time sensitive, please contact us urgently
- ✓ Applying for a change of child support assessment, if your circumstances have changed since the initial agreement

# SPOUSAL MAINTENANCE

Spousal maintenance is financial support paid by a party to a marriage or de facto relationship, to their former partner in circumstances where they are unable to adequately support themselves.

There is an obligation on all parents to pay child support for the benefit of their children in accordance with an assessment or agreement, but in some circumstances, where one party is unable to afford their day to day expenses after a breakup even with child support received from the other party, they may be able to receive maintenance from the partner (married or de facto) to cover living expenses.

Such maintenance may be in various forms including the other party making mortgage payments for the home in which that party lives, paying various expenses, or paying that party a sum of money, once off or periodically.

## What does a Court consider when making a decision on spousal maintenance?

- Your age and health
- Your income, property, and financial resources
- Your ability to work
- What is a suitable standard of living
- If the marriage has affected your ability to earn an income
- Who the children (under 18 years of age or adult children who are disabled) live with

## Is there a time limit for applications for spouse maintenance?

If you were married, applications for maintenance must be made within 12 months of your divorce, if you were in a de facto relationship, your applications for maintenance must be made within 2 years of the breakdown of your relationship.

## How our team can help you navigate spousal maintenance:

In the absence of court orders, there is no absolute requirement for one party to pay maintenance to the other, and whether they should will depend on individual circumstances. If it is not possible to reach an agreement about the payment of maintenance within your relationship, you should discuss with a lawyer about whether an application to the court is appropriate.

It is vital to obtain some independent legal advice in relation to your situation, our expert lawyers at Orman Solicitors can help you understand your legal rights and responsibilities and explain how the law applies to your case.

# WE ARE HERE WHEN YOU NEED US



As you can see there is a lot to consider when going through separation. At Orman Solicitors, we're committed to delivering the highest quality legal advice and services. We pride ourselves on providing reliable, trustworthy services, unmatched legal experience, compassion, and empathy in everything we do.

No matter your circumstances, our team always has the best interests of our clients in mind, and we'll strive to advocate for you and your rights. We will provide you with personal and practical advice that can help you make informed choices about your separation.

Here's how we'll help you:

- We'll update and consult with you every step of the way
- We'll negotiate the best result for you
- We'll make sure your Child/ren are the number one priority

If you are ready to talk to a lawyer and make a step forward to securing your independent future, call us now to book a free 15 minute consultation to discuss your needs.



1800 676 267



[reception@ormansolicitors.com](mailto:reception@ormansolicitors.com)