Orman SOLICITORS

STARTING OVER

After Separation?



Your practical guide to understanding your rights, protecting your finances and planning your next chapter.

Welcome



When life changes, knowing where to start can make all the difference.

Separation can turn the life you've known upside down.

Whether you've been together for five years or thirty, the end of a relationship often brings a long list of questions you never expected to face. Where will I live? What happens to our home? How will I manage financially? What am I entitled to? What arrangements should we make for the children? And how do I begin planning for a future that suddenly looks very different?

For many people, the hardest part isn't just making these decisions. It's knowing where to begin. At Orman Solicitors, we've spent more than 18 years helping people navigate separation, divorce and the important decisions that follow.

We've created this guide to help you understand some of the key legal and financial issues to consider, recognise things that are often overlooked and take practical steps to protect your interests.

You don't need to have everything worked out today. But understanding your options can help you make decisions that are right for your circumstances.

> *One step at a time. You'll get there.*

The content presented in this guide is offered for informational purposes and should not be construed as legal advice or a substitute for professional guidance. If you have questions or require legal assistance, we strongly recommend consulting with a Solicitor as soon as possible to address your individual circumstances.

your First Steps

What should you do first?

When a relationship ends, it can feel as though everything needs to be sorted out immediately. The family home, joint finances, bills, children's arrangements and everyday responsibilities can suddenly become complicated.

There is no single checklist that applies to every separation, but there are practical steps you can take to begin getting organised.

Get Advice Early

Even if you haven't officially separated yet, get some legal advice so you know what options are available to you. Moving out, withdrawing substantial funds, changing joint financial arrangements or signing agreements can have consequences that are worth understanding first.

Record your Separation date & key events

Make a note of your separation date and important milestones in your relationship, particularly if you continue living under the same roof. Separation can be an emotional and overwhelming time, so keeping a record of significant events while they are fresh in your mind may be helpful if you need to provide a detailed history of your relationship or prepare an affidavit later.

Keep Important Records

Gather copies of financial information and other relevant documents you are lawfully entitled to access. These may be useful when discussing a property settlement

Allow yourself to grieve

Separation involves loss, and it's important to give yourself permission to grieve. Allow yourself to feel the emotions that arise, whether it's sadness, anger, confusion, or relief. Suppressing these emotions can hinder the healing process. Seek support from friends, family, or even a therapist who can provide a safe space for you to express your feelings.

Prioritise self-care

During times of separation, self-care becomes more crucial than ever. Pay attention to your physical and emotional needs. Engage in activities that bring you joy and relaxation, whether it's reading, exercise, meditation, or spending time in nature. Nourishing your body and mind will help you build resilience and cope with the challenges ahead.

Seek professional help

Therapists and counsellors can offer valuable guidance and support as you navigate through the complexities of separation. They can help you process your feelings and develop coping strategies. Therapy can be a powerful tool for healing and moving forward with clarity.

Strive for open, respectful communication during and after separation. Be mindful when disagreeing to always maintain polite communications. Text messages, emails and social media content and message can all be submitted to courts and police. If you are being subjected to abusive communication limit in person interactions, switch to written forms like text and email, and seek urgent legal advice so that your Solicitor can communicate on your behalf and refer you to support services.

A plan for the kids

Adjust your parenting arrangements

Separation is a difficult and emotional time for everyone, but it is vital that steps are taken to reduce the impact on the children involved. Work together to establish a parenting plan that serves their best interests. Keep the lines of communication open with your co-parent, and be flexible and cooperative to ensure a stable environment for your children during this transition.

Notify the school and extracurricular activities

If the Children are school age, make sure you let the school and any activities they participate in know so they have contact details for both parents and who they should call in an emergency. If there is a new schedule for the children's living arrangements communicate with the school so they are clear on the responsibilities of each parent.

Emergency contacts

Let your doctor, dentist, workplace and any other relevant contacts know who to contact in the event of an emergency.

Your life admin

- [ ] **Bank Account**
  Open a bank account in your name if you don't already have one. If you have joint bank accounts, notify the bank and ensure both signatures are required for any redraws or transfers.

- [ ] **Mortgage**
  Notify your lender about your change in circumstances. If you have a redraw facility available, put a hold or cancel the redraw. If you are worried about meeting the repayments, talk to your lender to see if you are eligible for any assistance.

- [ ] **Credit Cards**
  Cancel any joint credit cards.

- [ ] **Email**
  Open a new private email account.

- [ ] **Passwords**
  Change your passwords on all your personal accounts such as banking, emails and social media.

- [ ] **Superannuation Death Binding Nomination**
  Update your super death binding nomination and any life insurance policies.

Understanding your Property Settlement

What happens to everything you've built together?

For many people, one of the biggest concerns after separation is what will happen to the assets they've spent years accumulating. Perhaps you've worked together to pay off a mortgage, raised children while your partner built a career, contributed to a family business or supported the household in ways that weren't always financial.



So how is everything divided?

In Australia, there is no automatic 50/50 split of assets following separation. There is also no single formula that applies to every relationship.

When determining a property settlement, the Court considers several important matters.

01 What property and debts do you each have?

This involves identifying property, liabilities and relevant financial interests, including assets held individually or jointly.

02 What has each person contributed?

Contributions can include income, property, homemaking, parenting and other financial and non-financial contributions before, during and after the relationship.

03 What are your current and future circumstances?

Factors may include age, health, income, earning capacity, financial resources and the care and housing needs of children.

04 Is the outcome just and equitable?

The Court must be satisfied that making the proposed property orders is just and equitable in the circumstances.

What does this mean for you?

Your contributions to a relationship aren't measured solely by how much money you earned. Years spent raising children, managing the home or supporting your partner's career may be relevant when determining a property settlement.

What's included in a Property Settlement?

It's not just the family home.

When people think about dividing assets after separation, the family home is often the first thing that comes to mind. But a property settlement may involve much more than real estate and savings. Depending on your circumstances, relevant property and liabilities may include:

Property and liabilities to consider

- ☐ The family home
- ☐ Bank accounts
- ☐ Shares and investments
- ☐ Trust interests
- ☐ Cryptocurrency
- ☐ Credit cards and tax debts
- ☐ Investment properties
- ☐ Superannuation
- ☐ Businesses and companies
- ☐ Vehicles and valuables
- ☐ Mortgages and loans
- ☐ Other property interests

Three things people are often surprised to learn

"But the house is in my partner's name."

Whose name appears on the title doesn't necessarily determine how property will be dealt with following separation.

"I inherited that money, so surely it's mine?"

Inheritances and gifts are not automatically excluded from consideration. Their treatment depends on the circumstances, including when they were received and how they were used.

"The business is held in a trust, so it doesn't count."

Business and trust arrangements can be complex. Depending on the nature of the interests and control involved, they may be relevant to a property settlement.

The takeaway: Don't assume something is included or excluded simply because of whose name it is in, when it was acquired or how it is held.

Gathering your financial information

Getting a clearer picture of your finances

One of the most useful things you can do after separation is begin gathering financial information. This helps establish what assets and liabilities exist, what they may be worth and whether further information is needed.

You don't need to have every document before seeking legal advice, but the following checklist is a helpful starting point.

Personal & Income

- A copy of your driver licence
- A copy of your marriage certificate
- If have an international marriage certificate, a version in English will be helpful
- Your child/rens birth certificate(s)
- Three most recent taxation returns and assessment

Superannuation

- Current superannuation statements for each superannuation fund you belong to
- Information about any self-managed or defined benefit interests

Banking & Liabilities

- Bank and savings account statements
- Mortgage and other loan statements
- Credit card statements and other debt information

Property & Investments

- Property ownership details and available valuations
- Share portfolios and investment statements
- Vehicle details and other significant assets

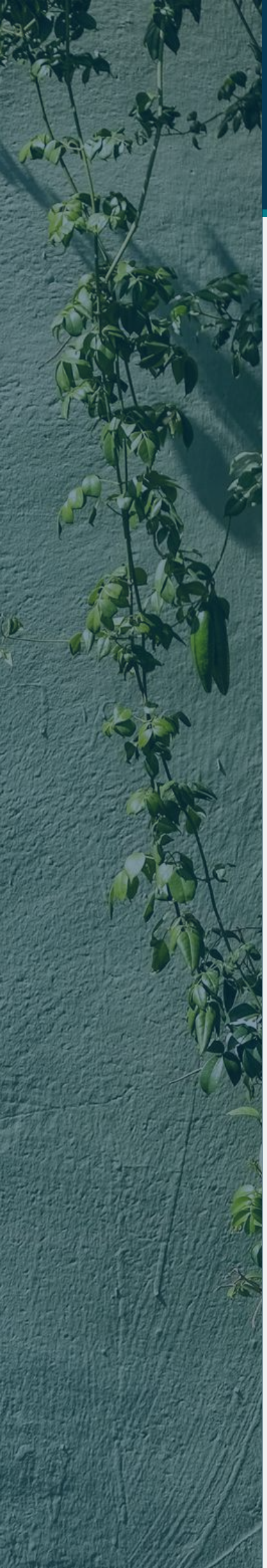
Businesses & Trusts (if applicable)

- If you have an interest in a corporation, business, trust or partnership, we will require Financial statements including balance sheets, profit and loss accounts, depreciation schedules and taxation returns, for the three last financial years;
- For any trust, the trust deed; and
- For any partnership, the partnership agreement

What if you don't know where all the money is?

Not everyone has been equally involved in managing the family finances. If your former partner handled the banking, investments or business finances, you may not know exactly what exists.

That's something you can discuss with your family lawyer. You don't have to investigate everything yourself before making an appointment.



Financial disclosure: Do you have the full picture?

What if your former partner hasn't told you everything?

It's difficult to make an informed decision about a property settlement if you don't know what you're dividing.

Under Australian family law, Married and De Facto couples involved in financial or property matters have a duty to provide full and frank disclosure of relevant financial information and documents. The duty requires disclosure to be provided in a timely manner and continues throughout Court proceedings until they are finalised.

Importantly, the legislation also provides for disclosure obligations while separated parties are preparing for financial or property proceedings. The purpose of disclosure is straightforward: before a property settlement can properly be determined, both parties need an accurate understanding of the assets, liabilities, financial resources and other relevant financial circumstances.

What if something doesn't add up?

Perhaps you've noticed unusual withdrawals from a joint account. Your former partner's business income suddenly looks different. Or you've discovered investments you didn't know existed.

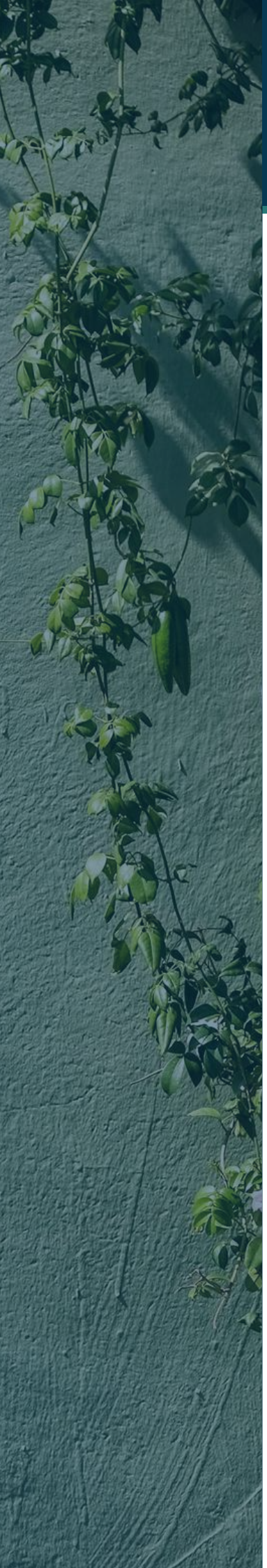
These circumstances don't necessarily mean someone is hiding assets, but they may warrant further investigation.

Your solicitor can advise you about requesting financial disclosure and the legal processes available if relevant information isn't provided.

A family lawyer's perspective...

Concerns about hidden assets don't always start with discovering a secret property or bank account. Often, it is because something in the financial disclosure simply doesn't reconcile: business income has changed significantly, money has moved around the time of separation, or documents don't match what a client knows about the family's financial circumstances.

Identifying those inconsistencies early can help determine whether further disclosure, investigation or expert assistance is required.



Superannuation: The asset people often forget

Why your super matters after separation

Superannuation can be one of the most significant assets accumulated during a relationship, particularly where one partner has spent years working while the other has taken time out of paid employment to raise children. Yet it's often overlooked because it isn't money sitting in an everyday bank account.

Superannuation & the property pool

Superannuation is not automatically divided when a couple separates. It forms part of the total asset pool, which includes property, savings, investments, and liabilities. The Federal Circuit and Family Court of Australia (FCFCOA) will consider superannuation as part of the overall settlement to ensure a just and equitable outcome.

The Court looks at factors such as:

- The length of the relationship
- Each party's contributions (financial and non-financial)
- The future needs of each party (including age, income, and care of children)

Superannuation can either be split between the parties or offset against other assets, depending on whether it is fair, just and equitable to do so in the circumstances.

How superannuation splitting works

Mutual Agreement

This is a written agreement between both parties that specifies how super will be divided. It must comply with formal requirements, including each person receiving independent legal advice from a Solicitor before signing.

Court Order

If an agreement cannot be reached, the Court can make a superannuation splitting order as part of the property settlement.

Once a super split is approved, the super fund transfers the specified portion to the receiving party's nominated superfund account. The funds remain preserved until retirement and cannot be accessed immediately.

Dividing superannuation can be complex, especially where large balances, multiple funds, or defined benefit schemes are involved. Obtaining advice from an experienced Family Law Solicitor ensures the agreement complies with legal requirements and that your future financial security is protected.

The Family Home

Should you stay or sell?



Keeping the home isn't always the best financial outcome

For many separating couples, the family home is more than an asset. It's where children have grown up, memories have been made and a significant amount of money and effort has been invested. It's understandable that keeping the home may feel like the most important part of a property settlement.

But before making that decision, it's worth considering whether keeping the property is financially sustainable.

Look beyond the property's value

Even if you can retain the home as part of your settlement, you may need to refinance an existing mortgage into your own name. Your lender will generally need to assess your ability to meet the repayments.
You also need to consider the ongoing costs of owning the property, including council rates, insurance, maintenance and repairs.

Consider the bigger financial picture

A property settlement that leaves you with the home but very little available cash may not suit your circumstances. You may also need to consider whether retaining other assets, such as superannuation or investments, could provide a better balance for your longer-term financial position.

Questions worth asking

- Can I afford the mortgage on my own income?
- Will the bank approve refinancing?
- How much will it cost to maintain the property?
- What other assets would I be giving up to retain the home?
- Would selling the property give me greater financial flexibility?

The aim isn't necessarily to keep the most valuable asset. It's to understand what the proposed settlement will mean for your financial future.

Before you agree to a property settlement

Is the proposed agreement really right for you?

It's common for separating couples to want to resolve their financial arrangements quickly, particularly when the relationship has ended amicably or the separation has been emotionally difficult. But a settlement that sounds reasonable at first may have consequences that aren't immediately obvious.

Before agreeing, consider the following:

01 Have all assets and debts been identified?

Make sure you're looking at the complete financial position, not just the family home and bank accounts.

02 Are the valuations reliable?

Significant assets such as real estate, businesses and some superannuation interests may require professional valuations.

03 Have you considered tax?

Transfers or future sales of property, shares or business interests may have tax implications. Capital Gains Tax rollover relief may be available in certain circumstances, but it does not necessarily eliminate future tax liabilities.

04 What happens to joint debts?

An agreement between former partners does not automatically release either person from their contractual obligations to a lender.

05 Have you considered your future circumstances?

Income, earning capacity, health, care of children and housing needs can all be relevant.

06 Do you understand how the agreement will become legally binding?

Informal agreements may not provide the finality you expect.

How do you formalise a property settlement?

Two common options are:

Consent Orders: An agreement submitted to the Court for approval. If made, the orders are legally binding and enforceable.

Binding Financial Agreement: A private agreement that must satisfy specific legal requirements, including each party obtaining independent legal advice, to be binding.

The most appropriate option depends on your circumstances.

Before you sign ask yourself: Do I understand what I'm receiving, what I'm giving up and what my financial position is likely to look like after settlement?

Parenting After Separation

Making arrangements that work for your children

When children are involved, separation brings another layer of important decisions. Where will the children live? How much time will they spend with each parent? What happens during school holidays? And how will important decisions about their education and health be made?

There isn't one parenting arrangement that works for every family.

Under Australian family law, the child's best interests are the paramount consideration when the Court makes parenting orders. There is no presumption that children must spend equal time with each parent.

What should you consider?

Everyday routines:
Where children will live, how school and daycare will work, transport, changeovers and extracurricular activities.

Future changes:
What happens if one parent wants to relocate, travel overseas or change existing arrangements?

Major decisions:
How decisions about education, health, religion and other major long-term issues will be made.

Special occasions:
Christmas, birthdays, school holidays and important family events.

Communication:
How parents will exchange information and how children will communicate with each parent when apart.

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

Parenting plans and parenting orders: What's the difference?

A parenting plan is a written agreement between parents about arrangements for their children. It is not directly enforceable as a Court order.

A parenting order is made by the Court, including by consent where parents agree, and is legally binding.

Financial support after Separation

Child support and spousal maintenance

A property settlement is only one part of the financial arrangements that may need to be considered after separation. There may also be questions about the ongoing costs of raising children and whether one former partner needs financial support.

Child support

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

Child support is generally intended to help meet the financial costs of raising children. The amount payable can depend on factors such as the parents' incomes, the children's care arrangements and other relevant circumstances.

Child support may be assessed through Services Australia or dealt with through an appropriate private agreement. Beyond ordinary child support payments, parents may need to discuss expenses such as school fees, childcare, medical treatment, extracurricular activities and health insurance.

Spousal maintenance

In certain circumstances, a person who cannot adequately support themselves may be entitled to financial assistance from their former spouse or de facto partner, where the other person has the capacity to provide that support.

Spousal maintenance is not automatic. Entitlement depends on the individual circumstances, and legal time limits can apply.

What does a court consider?

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

If you're concerned about how you will manage financially following separation, raise this with your solicitor early.

Protecting your future beyond the property settlement

Have you reviewed your Will and estate plan?

Separation doesn't automatically update your Will, superannuation death benefit nomination or other estate planning arrangements. In NSW, divorce generally revokes certain provisions in an existing Will relating to a former spouse, subject to exceptions. However, separation alone does not have the same effect. This means your existing arrangements may no longer reflect your wishes.

For example, your former partner may still be named as an executor or beneficiary in your Will, or appointed to make important financial or personal decisions for you.

Your estate planning review

□ **Will:** Does it reflect who you want to inherit your estate and who should administer it?

□ **Enduring Power of Attorney:** Is the person appointed to make financial and legal decisions still appropriate?

□ **Appointment of Enduring Guardian:** Have you reviewed who may make health and lifestyle decisions if you lose capacity?

□ **Superannuation death benefit nomination:** Is your nomination current and valid under your fund's rules?

□ **Life insurance:** Are the policy ownership and beneficiary arrangements appropriate?

□ **Jointly owned property:** Do you understand how ownership arrangements may affect what happens to an asset when you die?

Reviewing your estate planning arrangements early in the separation process can help ensure they continue to reflect your wishes and changing circumstances.

Important time limits you shouldn't overlook

Divorce and property settlement are two separate processes

One of the most common misunderstandings about separation is that you need to be divorced before you can divide your property. Property settlement can be negotiated and formalised before a divorce is finalised.

However, there are important time limits for commencing certain Court proceedings.

DIVORCE

12 months and one day

Generally, the minimum period of separation required before applying for divorce.

MARRIED COUPLES — FINANCIAL PROCEEDINGS

12 months after divorce

Generally, the period for commencing property or spousal maintenance proceedings after a divorce order takes effect.

DE FACTO COUPLES — FINANCIAL PROCEEDINGS

2 years after separation

Generally, the period for commencing property or de facto maintenance proceedings after the relationship breaks down.

Exceptions and different rules can apply, including where permission to commence proceedings out of time is sought. Some types of proceedings are also excluded from the usual limitation periods.

Don't assume you have unlimited time simply because you're still negotiating or haven't applied for divorce.

Getting advice early can help you understand which deadlines apply to your circumstances.

JustFund

Navigating a divorce or separation can be an emotionally and financially challenging time. At Orman Solicitors, we understand that uncertainty about legal costs can add to the stress. To ensure you have the support you need, Orman Solicitors is an accredited partner of JustFund - offering an affordable and flexible line of credit to cover Solicitor and Counsel fees, as well as disbursements.

Unlike traditional loans, there is no upfront payment, with fees only payable upon the settlement of your family law matter. This allows your matter to move forward without financial barriers, ensuring you receive the strategic advice needed to resolve your separation.



Who is JustFund?

JustFund provides an innovative approach to helping clients pay legal bills. They work with leading family law firm partners across Australia to offer assistance with legal fees. This is a game-changer for those in a financially difficult position. People struggle with accessing legal services for many reasons. For example, a financially dependent spouse experiencing family violence may seek assistance removing themselves from that environment. However, their financial dependence severely limits their options.

JustFund takes the stress out of seeking financial relief. They offer a flexible and affordable line of credit to cover legal expenses and disbursements during your separation and you can apply at any stage of the settlement process.

Unlike traditional lenders, JustFund focus on your unique circumstances and legal entitlement. Not just metrics like income, employment history and credit score.

Applying doesnt affect your credit score.

What are the key benefits of using Family Law funding?

1. Repay at Settlement:
With repayment deferred until your matter is settled, you can alleviate the ongoing stress of legal bills and focus fully on resolving your matter and moving forward with confidence.

2. Pay Only for What You Use:
As a flexible line of credit, you'll only pay interest on the funds drawn, helping you avoid unnecessary expenses.

For more information and to apply visit www.justfund.com.au

Your Separation Action Plam

Where do you go from here?

By now, you'll have a clearer understanding of the legal and financial issues that may need your attention. You don't have to tackle everything at once. Start with the matters that are most important to your circumstances.

Use this final checklist to identify your next steps.

Your Separation Action Plan

- [ ] Record my separation date and important details
- [ ] Review my immediate financial position and joint accounts
- [ ] Gather relevant financial documents
- [ ] Identify known assets, liabilities and superannuation
- [ ] Think about parenting arrangements (if applicable)
- [ ] Apply for Child Support (if applicable)
- [ ] Review my will and estate planning documents
- [ ] Check which legal time limits apply to me
- [ ] Book an appointment to discuss my legal options

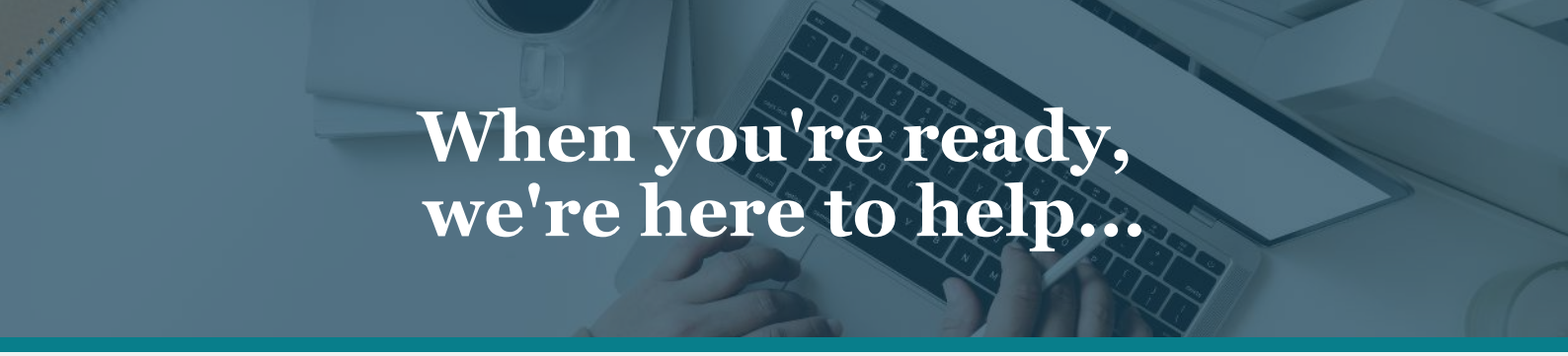




Questions to take to your first appointment

You may find it helpful to write down your concerns before meeting with a family lawyer. Some useful questions include:

- What should I be doing now to protect my interests?
- What assets and liabilities are relevant to my property settlement?
- How can I find out more about our financial position?
- What might a property settlement look like in my circumstances?
- What are my options if my former partner and I cannot agree?
- What are the likely next steps, costs and timeframes?



When you're ready, we're here to help...

You don't need to have all the answers before speaking with a lawyer.

Separation can be one of life's most significant transitions.

There may be difficult decisions ahead, but understanding your legal position can help you approach those decisions with greater clarity.

At Orman Solicitors, we know that every family, relationship and separation is different. For more than 18 years, we've helped people navigate the legal and financial challenges of separation and divorce.

Our approach is practical, straightforward and focused on helping you understand your options so you can make informed decisions about your future.

Whether you're considering separation, have recently separated or are trying to finalise your property or parenting arrangements, we're here to help.

Meet the Team



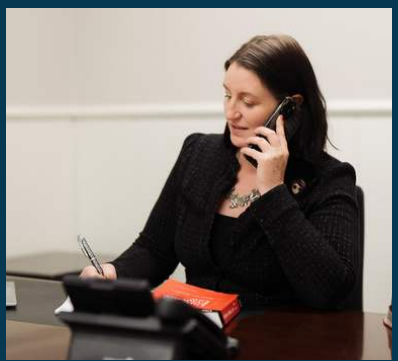
Maggie Orman
Director



Renata Matyear
Senior Solicitor



Belinda Doyle
Senior Solicitor



Start with a confidential chat

An initial conversation gives you an opportunity to briefly explain your circumstances and find out how our team may be able to assist.

Book your
Free 15 minute consultation

1800 676 267