



**MartinBullock**  
LAWYERS & ATTORNEYS



**Family Law**

# Family Law

## Separation

Separation is defined as the intention of one or both parties not to continue with the relationship and act as if the relationship has come to an end.

If one of the parties alone considers that the relationship is at an end, that party must communicate this to the other party.

It is important to document when the relationship has come to an end as this will affect when a married party can apply for a divorce.

In de facto matters, you must commence proceedings for property matters within two years of the cessation of the domestic relationship.

You can be separated and living under the same roof.

## Divorce

Australian Divorce Applications are relatively simple and easy. It takes two parties to make a marriage but only one party to end a marriage.

To be granted a divorce by the Court, you don't have to prove that the other party was at fault. A divorce can be granted without your consent and even if you oppose it.

The only grounds for divorce are:

- The parties have been separated for one (1) year;
- The marriage has broken down irretrievably (permanently); and
- There is no likelihood of resuming married life.

# Family Law

The Court must be satisfied that these grounds have been met before granting a divorce.

An Application for Divorce can be filed by one party or jointly by both parties. Marriages of less than two years require the filing of a counselling certificate with the application. It takes about six weeks from the time of lodging the application to the hearing of the divorce. You do not have to go to Court if there are no children of the marriage.

Once the Court pronounces a "Decree Absolute" or final divorce, you will be divorced and free to remarry.

The Court can refuse to grant a divorce if the grounds for divorce are not met or the parties have not made proper arrangements for the children.

You have one year from the date the divorce is finalised to commence property proceedings.

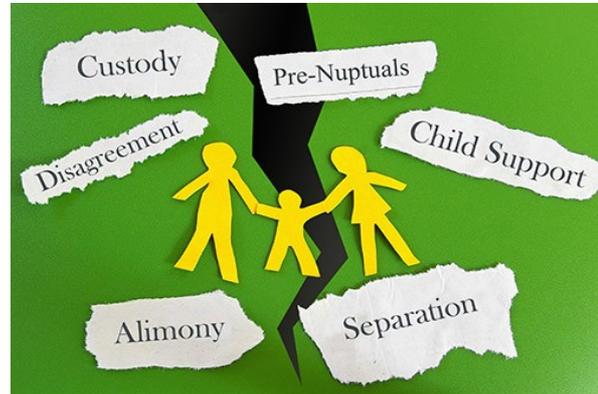


# Family Law

## Child Custody Rights

What we all know as "child custody rights" has had a name change. The new buzz words are:

- Shared Parental Responsibility
- Residence
- Contact



The overriding principle of the Court in making children's orders is *"what is in the best interests of the children?"*

You may have heard in the media that equal time with each parent is the law. This is incorrect. Each case is different and the Court will always look at the overriding principle – what is in the best interests of the children – before making any children's orders.

The legislation preserves the child's rights to know and have a meaningful relationship with both their parents rather than the parents' rights to spend time with the child or children.

The court can make orders that the children spend time with other significant people such as grandparents.

# Family Law

## Shared Parental Responsibility

This means the parents share equally in making decisions for the children e.g. religion to be followed by the child, medical procedures, which school the child attends, and other long term issues.

One party is not permitted to make long term decisions unilaterally. Shared parental responsibility DOES NOT MEAN equal time spent by each parent with the child.

The Court can order sole parental responsibility to one party in circumstances of child abuse, domestic violence and when one party does not wish to participate in the child's life.

## Residence

This basically means where the child lives.

## Contact

This basically means the right of the child to have an ongoing relationship with the parent who does not have residence.

# Family Law

The Court looks at a number of issues when determining what is in the child's best interests:

- Primary considerations – the benefits of the child having a meaningful relationship with both parents and the need to protect the child from physical and psychological harm;
- Views expressed by the child;
- The nature of the child's relationship with both parents;
- The effects of separation on the child from a parent;
- The parents' attitude to the child and to responsibilities of parenthood;
- Domestic violence issues;
- Payment or non-payment of child support; and
- Other issues.

The number of nights a child spends with the other parent may be relevant also in assessing property issues and child support and this quite often leads to conflict when one parent wants to minimise payment of child support and presses equal time with the child to achieve this goal.

# Family Law

## Financial Matters

Financial matters are always a concern to our clients.

The separating parties must not only deal with the breakdown of the relationship, but also the practical day to day issues such as:

- Can I afford to keep the family home and pay the mortgage?
- Will the other party pay child support?
- Can I afford to continue sending the children to a private school?
- How do I support myself and the children on one wage?
- Who pays the debts from the marriage?
- How do I manage to support myself and pay child support?

When a Court looks at apportioning the property between the parties, it does not use a mathematical formula. The individual facts of each case will determine the apportionment.

No two cases are alike.

# Family Law

## What is Property?

The definition of property is very broad – some examples are:

- Land
- Family home
- Household furniture and effects
- Shares
- Collectables and antiques
- Money in bank accounts
- Intellectual property
- Motor vehicles
- Superannuation
- Family business/company
- Jewellery
- Tools



# Family Law

## Determining the Apportionment of the Property Pool

The Court goes through a number of processes in order to determine the appropriate apportionment of the property between the two parties. These processes include:

1. Identifying and valuing the matrimonial assets.
2. Assessing financial and non-financial contributions by the parties to the acquisition, conservation or improvement of the property.
3. Considering other matters such as:
  - Age and health of the parties;
  - Duration of the marriage;
  - Care of the children;
  - Payment of child support;
  - Financial resources such as beneficiary under a Trust;
  - Amount in superannuation funds;
  - Earning capacity; and
  - Any other relevant matters.
4. Adjusting the property orders so that they are just and equitable.

## The Back Page

Greg Martin - Solicitor



Greg is the principal of the firm and a senior solicitor of 33 years' experience. He has practiced in litigation for the whole of his career, including commercial law, family law, wills and estate litigation, extensive commercial litigation, criminal law and personal injury litigation. He was an Accredited Specialist with the Law Society of NSW. Greg also lectures at Western Sydney University in criminal law, advanced torts, contracts and alternative dispute resolution, and has done so for 8 years.

Visit our Website  
[mblawyers.com.au](http://mblawyers.com.au)

Martin Bullock Lawyers  
For all your legal solutions!

Telephone: 02 9687 9322

Email: [mbl@mblawyers.com.au](mailto:mbl@mblawyers.com.au)