

Property

Upon separation from your spouse or de facto partner it is important that the relationship assets and debts are dealt with and divided.

The way in which the assets and debts are divided between the parties is dependent on individual and relationship factors, therefore it is important that you seek legal advice in how the law relates to your circumstances.

If you and your ex partner/spouse have decided on how your property is to be divided you can formalise the agreement into *Consent Orders* or a *Binding Financial Agreement*. If you and your ex partner/spouse cannot agree on how your property is to be divided, you may consider *Family Dispute Resolution (FDR)*. If agreement is reached then you can formalise the agreement by entering into *Consent Orders* or a *Binding Financial Agreement*.



It is important to seek legal advice to determine which avenue is appropriate for your circumstances. If you or your ex partner/spouse cannot agree on how your property is to be divided, an application may be made to the court. You will need legal advice about this option.

Partners who were married have one year after the date of divorce order taking effect and parties in a de facto relationship have two years after the date of separation to **apply** to the court for property and maintenance proceedings unless permission is given by the court or by consent of the parties to apply out of time provisions.



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**For more information
please call 07 3826 1500**

To make an appointment
contact us Monday-Friday
between 8:30am and 5pm

Disclaimer

- This is general information only.
- It is not intended to give individual legal advice.
- Each person should seek independent legal advice relating to their circumstances.
- We do not accept responsibility for any loss or damage caused to anyone who relies on the information in this brochure.

YFS Legal is funded by the Australian Government and the Queensland Government and is certified by the National Association of Community Legal Centres.

YFS' vision for reconciliation with Aboriginal and Torres Strait Islander peoples is to develop and provide services based on respect and understanding. YFS acknowledges the past and works to build independence, participation and closing the unacceptable gap between Aboriginal and Torres Strait Islander peoples and other Australians' health and wellbeing.

This Centre is accredited by  NACLC
Community Legal Centres



Building independence and participation
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LEGAL ADVICE information guide

Family Law

FREE
LEGAL ADVICE

Monday-Friday 9am-5pm

Bookings are required
and can be made by
calling **07 3826 1500**



Building independence and participation



Parenting issues

The law says that arrangements for children are to be in the child's best interests, not what is best for the parents. The law says that children should firstly be protected from harm and secondly have a meaningful and significant relationship with both parents. Other factors should be considered. It is a good idea to get legal advice about your personal circumstances.

Arrangements for children may be initiated by:

- ▶ Parents: biological, adoptive, step-parents
- ▶ Family members: grandparents, aunts and uncles
- ▶ People who are concerned with the child/ren's welfare and wellbeing.

Parental responsibilities for children include:

- ▶ the care, welfare and development of child/ren until they are 18.

Long-term parental responsibility

- ▶ Education, religion, culture, health and names of children.

Day-to-day parental responsibility

- ▶ Bed time, meals, clothes, hygiene etc.

Living arrangements

- ▶ A child can live with one parent, all or most of the time.
- ▶ A child can live with both parents at different times.
- ▶ A child can "spend time with" the parent the child doesn't live with.

For example, a child who lives with one parent, spends time with the other parent through regular commitments such as weekends, school holidays, and special occasions, through phone calls, letters, emails and SMS texts, or through "supervised" visits.

All families are different. What works for your family may not work for another family. Each parent should seek their own independent legal advice about where a child is to live and who the child spends time with.

Options

- ▶ If parents can agree about the parenting arrangements for their children, the arrangements can be reflected in a parenting plan.
- ▶ If an agreement can not be achieved between the parents on their own, the parents might consider negotiating through lawyers or *Family Dispute Resolution (FDR)*, where the parties are able to discuss the arrangements. An FDR practitioner can assist the parties in reaching agreement.
- ▶ If the parties wish the agreement to be enforceable at law, the agreement will need to be reflected in a Consent Order, filed and approved by the Federal Circuit and Family Court of Australia.

- ▶ If parents can't agree and FDR fails or one party won't attend or is deemed inappropriate, you will need legal advice about this option. The FDR practitioner will issue you a certificate which will need to be filed with an application.

Dispute resolution - Domestic violence

The success of family law dispute resolution processes depends on the abilities of the parties to freely and confidently participate in the process. Domestic violence can affect your ability to participate in FDR, especially if you feel intimidated, pressured or afraid.

If you think you can not freely and confidently participate in the FDR process, you must inform your FDR practitioner because arrangements can be made to address this.
For example: The process can be undertaken in separate rooms or over the phone.

Remember during Family Dispute Resolution (FDR) everyone has a right to be safe, to speak, to be respected, to be heard, to take a break and/or end the session.

- ▶ Any agreements reached should include safety measures for yourself and your children.

There are some things that you can do to help achieve safe outcomes for you and your children:

- ▶ Tell the FDR service about the abuse you have experienced.
- ▶ Get legal advice before and after the FDR.
- ▶ Talk to the FDR practitioner beforehand to be ready for the session.
- ▶ Find support.
- ▶ Find and prepare any documents.

Take time to reflect on any agreements and consider their suitability and safety before you agree. This is a good time to get more legal advice.

Where to get help:

YFS - 07 3826 1500
Legal Aid Queensland - 1300 651 188
DV Specialist Services
(please note some of these may specialise in assisting women)
If an emergency call the police - 000

Divorce

Applying for divorce

You can apply for divorce in Australia if either you or your spouse:

- ▶ Resides in Australia and intends to remain in Australia indefinitely.
- ▶ Are an Australian citizen
- ▶ Ordinarily live in Australia and have lived in Australia for the last twelve months.

The pre requisites for a party to make an application to the Court for a divorce are that:

- ▶ The parties have been separated for at least 12 months and one day (so date of separation is important. Note: It is possible for parties to be separated whilst still living together. If this applies to you, seek legal advice) and;
- ▶ There is no reasonable likelihood of the parties resuming married life.
- ▶ If there are children under the age of 18, the Court will only make a divorce order if they are satisfied proper arrangements have been made for them.

Divorce application

Further information relating to divorce and divorce kits can be accessed on line through the Federal Circuit and Family Court of Australia website:

<https://www.fcfcfa.gov.au/>

This application can be filed by either spouse anytime after the 12-month one day separation period is up. For more information contact **YFS Legal** on **3826 1500**.



**BOOKINGS
ARE ESSENTIAL
CALL YFS LEGAL
3826 1500**