

What is Family Law?

Family law regulates marriage and de facto relationships, separation, divorce, splitting property, and the parental care and support of children.

The Court is often required to make decisions where couples cannot reach agreement, based on principles such as the best interests of the child. The law states that a non-working partner may have made an equal contribution to the relationship by being a parent and homemaker, despite no contributing income.

The Family Law Solutions

There are four ways of resolving family law issues:

1. *Negotiating* We first recommend negotiating a solution. It is easier, cheaper and can be a win/win situation if couples are clear about what they want and are prepared to give ground. Better still, by negotiating a binding financial agreement or parenting plan in advance, many disputes & Court can be completely avoided.

2. *Mediate and compromise to prevent Court proceedings* Before any documents are filed with the Court, both parties must attempt to reconcile or compromise the dispute, whether it relates to property and/or children. A mediator must first be used in children's matters, to try to find a

compromise. It can be done through relationship/counselling centres or authorized mediators. If you do come to an agreement, it can be formalised as an agreement or a Consent Order and registered with the Court. The mediator must issue a certificate to confirm the agreement, or otherwise.

3. *Commencing Court proceedings and settling before a final hearing*

Court proceedings are expensive. Once family law proceedings are commenced, the Court will require you to again negotiate and try to settle your matter. These Conferences bring you both together before a court counsellor or registrar, to discuss the issues in dispute and attempt to reach some common ground. They can be lengthy and go into detail about the value of the property and proposed parenting arrangements. The counsellor may wish to involve any children. Property valuations may be requested. The Registrar may make Orders (eg. for a party to provide documents, called disclosure). Again, if you can both reach agreement at the Conference, you are able to formalise that agreement by Consent Orders to avoid taking the dispute to a higher level of external scrutiny.

If you are not able to resolve your dispute, then the matter will eventually proceed to a hearing for the Judge to determine the final outcome.

A Court will not list the matter for a final hearing until all options for resolution have been considered and both parties have complied with disclosure orders. The majority of cases do settle before a hearing. Often the stress of external scrutiny and questioning encourages parties to settle, especially as one party if unreasonable, may be liable for costs of both parties.

4. *Determination by the Court*

A final hearing requires considerable funding (often a Barrister in addition to a Solicitor). It can also take some time from your initial application (2-3 years is not uncommon). Both parties and witnesses involved will require affidavits (Court statements of evidence) to be prepared and you will need to submit your updated financial information to the Court.

There are several steps in preparing for a hearing and you will be required to attend Court for one (or more if required) pre-trial conferences for the Court to determine whether or not your matter is ready to proceed to a final hearing.

The final hearing takes place before the Judge. You will put your case forward, and be cross-examined (as will the other party and all witnesses). The Judge will often then defer a decision for several weeks, to consider all of the evidence, then hand down a judgment later.

Preparing for family law proceedings

When dealing with your family breakdown, we recommend that you:

- Take a practical approach: focus on the practical steps towards resolution, not revenge or denial. Be aware that aggressive behavior towards your former partner, or things said or written in the heat of the moment, can be used in evidence. This also applies to emails and text messages. Keep a level head with any dealings with your former partner.
- Always have a support person/witness there for face-to-face contact with your former partner. That person can then provide a statement and give evidence in relation to any incidents that are disputed. This tactic also serves to keep your former partner on their best behaviour, thereby avoiding domestic violence for instance.
- Create a 'paper trail': Disputes can go on for many months or even years. For property, keep bank statements, property records etc in a secure location. It is also important to record important incidents in a diary as you and your witnesses will need to refer to them later in your Affidavits (Court statements of evidence).

- Be prepared to make concessions: Figure out what really matters to you. Maintain your position on only those important issues and concede areas that don't matter to you so much. Make commercial decisions rather than emotional or power play decisions in property matters.
- Seek professional advice: Often it is worthwhile seeking more than legal assistance. Consult a psychologist to assist you to work through the issues associated with a family breakdown, or an accountant to work out your finances. We can assist you with the legal process and with negotiating a settlement. We have a referral network of professionals for help and guidance if required.

How much will it cost?

Our Solicitors' hourly rate is \$300.00 plus 10% GST. Some work can be carried out by a legal clerk at a much lower rate. See our brochure on *How to Minimise your Legal Costs*. In some cases legal aid may be available, particularly issues involving children. We can apply on your behalf.

GETTING RESULTS IN FAMILY LAW



Baker & Borthwick Solicitors
1 Wharf Street, TUNCURRY 2428
PO Box 69 TUNCURRY 2428
PH: (02) 6555 5555