

10-Step Separation Checklist

During Early Stages of a Separation or Pre-Separation

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PRINCIPAL



Hints and Tips

For general information only

The following hints and tips are given as steps you can take towards protecting your legal rights in the event of a separation. It is general information only and may not be suited to your specific needs. Always seek legal advice to ensure that your particular circumstances are met.

These hints and tips will be more relevant to people at an earlier stage of their relationship having just separated or considering separation, but will also be helpful to consider for people at all stages of separation.

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1 Residence

Decide where you will reside

This may be stating the obvious but try and think long term if you can when making this decision. Do you own a home together? If so, you may want to remain in the home to increase your entitlement to the property (you should talk to a lawyer about your potential entitlements). If this is not possible, can you afford to rent a separate residence? Perhaps you have an investment property that you can move into.

The decision about where you live is vital in determining your expenses, your entitlements and, if you have children, whether the environment is suitable for your children. The Family Court will want to ensure that children are in a safe and suitably appropriate environment.

If the utility accounts are in your name and you no longer reside in the home, give your partner notice that you will be removing your name from the accounts. Conversely, if you are residing in the home but the accounts are under your ex-spouse's name, contact the utility companies and have the account transferred into your name if they will allow this or, if they won't permit a transfer, set up a new account.



2 Documents

Collect important documents and information

You have a legal obligation to provide full and frank disclosure of all relevant documents and information. It will make the divorce/separation process a lot easier if you collate all your financial documents before you leave the home (see checklist below). Redirect any mail in your name. Following separation, your former spouse is required to comply with the requirements of full and frank disclosure by giving you all relevant information either in accordance with the law or any reasonable requests you have made.

Many clients who have been financially dependent on their former spouse for much of their relationship do not know very much about the financial comings and goings of their former spouse. Some have never paid a bill or looked at a bank statement. Do not be this person.

A big red alarm bell that should warn you that there may be hidden assets is if you broach conversations with your spouse (during the relationship) about financial matters and they are evasive in response, avoid the conversation, or become angry and turn the tables on you. Well before you give any hints about separation ensure you become fully abreast of your financial position and that of your partner. Do not open your partner's post or hack into their computer. This is illegal. If you give them to a lawyer during a divorce, your lawyer should hand these documents to the other lawyer without reading them. They will also need to stop acting for you if you insist on pursuing a course of illegal action. However, if you have inadvertently seen information laying around the home, then you can keep some notes about this information as a memoire aide and your lawyer can rely on your recollection and memoire aide to ask the Court for orders for the other party to produce certain financial documents or to seize documents from their premises.



Documents

Collect important documents and information

Before seeing a solicitor, you should have at the very least the following documents:

- last three payslips,
- last three individual tax returns and notices of assessment,
- bank and mortgage statements for the last 12 months,
- credit card statements for the last 12 months,
- registration papers for vehicles/boats/bikes,
- copies of certificate of titles for properties,
- rates certificates for properties,
- utility bills evidencing your name on properties,
- superannuation statements evidencing your interests,
- marriage certificate, and documents relating to any other assets and liabilities.

If you have an interest in a business, company or trust, you will need to provide:

- tax returns,
- financial statements,
- balance sheets,
- BAS statements, and
- relevant deeds and constitution documents.

Print out statements using online banking and tax portals as this will save time.

If the children have passports then you will need to decide which parent these will remain with.



3 Legal Advice

Contact Heras Family Lawyers info@heraslaw.com

People are often afraid of seeking advice from a lawyer because they believe the costs will be too high or they believe they can sort out things on their own. However, you can call for an initial appointment to discuss what options are available and what are the costs associated with each option. We strongly recommend you try and seek advice from a lawyer before you separate. This will make the process smoother for you and you will have a more certain attitude about the actions you can take.

The things a family lawyer will do with you in that first appointment include:

- determining whether you are safe or are you experiencing violence
- give you basic advice about how the court determines parenting and property disputes
- explain the divorce process,
- explain the different pathways for resolving disputes and associated costs, which typically include: negotiation, mediation and litigation (last resort in most cases).

Try and understand that you will not receive a quick fix solution after one appointment. A family lawyer needs to spend time going through your relationship and financial history with you to try and understand the whole picture, as well as what your current needs are and what your future needs will be. They then need to make contact with your former spouse to determine whether the matter can be resolved amicably through negotiation. You will obtain advice about what the best options are for you specifically and what the consequences of taking a particular course of action are likely to be. You should be given clear next steps. Your lawyer will ensure you understand your legal entitlements. This information does evolve as your lawyer collects more information about your circumstances.



4 Joint assets

Break joint accounts and assets

We recommend you ring up your bank even before you tell your spouse you're separated and ask to speak to them confidentially about what steps you should take. If you are already separated, call your bank to advise them of this. One of the first things you will want to do is set up the requirement for joint signatures to drawdown from accounts with large sums, such as an offset account or loan redraw facility. If your wages, salary or other income are directed to a joint bank account, you should consider redirecting this to a sole bank account. If you don't have a sole account, get one. The law in Australia is that if an account is in joint names then the monies held in that account are legally owned by both parties, regardless of the amounts each party contributed to the account. Also, where you hold a credit card in your name and your partner is the additional card holder, you will be solely liable for the debt, so ensure you remove them from this card promptly. You may also wish to stop online access to accounts.

Things get sticky when there are considerable savings in joint bank accounts. You may feel like emptying the whole account if it is held in joint names, but keep in mind that the Family Court considers this to be a joint asset, and what you spend may be claimed back as a notional asset. Also, we can almost guarantee that this sort of action will ensure you have an acrimonious separation rather than an amicable one.



Joint assets

Break joint accounts and assets

If you can agree, aim to close down joint accounts and distribute savings. There will be some joint accounts you cannot close such as mortgage and offset accounts. Check what sort of bills are being paid from the joint accounts. Do you need to redirect payments? If you have a home, try to agree on who will contribute to the joint account and the amount of contribution to at least cover outgoings and mortgage repayments. If you are not the one remaining in the home but you are the higher income earner, check with a solicitor before ceasing payments of a mortgage, as your spouse may be entitled to make an application for spousal maintenance. Also, if you are paying the mortgage and you are not residing there, your financial contributions to the property may be taken into consideration when calculating the property settlement (or a portion of these payments can be applied towards child support).

If you own a property (home or investments) jointly and you don't see a resolution to the division of property as an imminent outcome, you may consider breaking joint tenancies. Don't forget that if you pass away before your ex, your share will be transferred to your ex automatically. If you break a joint tenancy, you can remain as tenants in common and organise a will to bequeath your share to your intended beneficiary.



5 Support

Get financial support

You will need enough money to live off. If you do not earn enough of an income to support yourself (and any dependent children) and there are funds in a joint account, you may be able to use this for reasonable expenses without fear of the Family Court “adding back” any amount withdrawn to the asset/liability balance sheet. You may however need to demonstrate that your expenses are reasonable and, if you are capable of earning a greater income, your former spouse can seek a court order that you take steps to find such work.

As a separated parent, you may be entitled to some government benefits. You may be entitled to a parenting payment, newstart allowance, family tax benefit, a single income family supplement, rental support, domestic violence support, or even a one-off crisis payment. You can start by looking at the government website. You should also make an application for child support or estimate what your child support payments would be. If the children are going to be residing with you for the majority of the time, then child support will be an important support mechanism for you. The relevant government department will take both your incomes into consideration and the time the children spend with each party when conducting the assessment. If you are in urgent need of child support and your ex is capable of providing this financial support, you should contact a lawyer to discuss making an urgent application for child maintenance orders.

If you are significantly disadvantaged financially following separation, whereby your lifestyle has diminished considerably and your ex is capable of providing some financial support from an income source he/she has access to in order to alleviate this hardship, you may be entitled to spousal maintenance.



6 Your things

Obtain access to your belongings

How do I get my personal belongings? He/she won't return them to me. This is one of the most common questions we hear from people going through separation. It is strongly recommended you make arrangements to move all of your personal and sentimental belongings before you inform your former spouse you are leaving. Resentful former spouses are unlikely to be accommodating after you leave and we often see people disputing ownership of the items or claiming the items cannot be found.

If you left behind important belongings and your partner is not letting you come back in to retrieve them, you have some options available to you by way of court orders. We recommend you speak to a lawyer about this. If there is an Apprehended Violence Order in place, you can apply for a property recovery order pursuant to Part 8 of the Crimes (Domestic and Personal Violence) Act 2007 whether you are the protected person or the defendant. This will give you access to the premises and there may be certain conditions involved.

If domestic violence is not an issue, or if you don't have an Apprehended Violence Order in place, your lawyer will need to file a claim in court for the return of the property. If there is a dispute over who owns the property, this matter will not be resolved until there is agreement or the court decides how to divide the items.



7 Passwords & Protection

Change all passwords

This point is probably self-explanatory. Your ex-spouse may know your passwords, and if he/she doesn't know them, they may be saved on the old computer. Therefore, change all passwords for email accounts, banking details, paypal, ebay, facebook, employment login details and any other online access points you might have.

We also recommend creating a new separate email for correspondence with your lawyer. If your former spouse has access to your emails, this will be disastrous for your case. Statistics show that cyberstalking amongst separated spouses is on the rise. Consider limiting social media posts, location services, and turning off computer cameras. Be wary of opening up attachments in emails and messages.

Protecting yourself from harm

If you fear for your safety you should ensure that your new residential address is kept confidential. Ensure that you re-route any mail that is addressed to you from your old home to your new home or a PO Box. If you cannot avoid your former spouse knowing your residential address, install cameras around your home.

If you have concerns about harm during changeover of children from one party to the other, you may consider installing a dashcam and parking so that you are visible at all times during changeover. Bringing a neutral party with you to changeover can also be helpful during initial stages, however, this may not be practical on a long-term basis. There are professional services that can facilitate changeover with a third neutral party in attendance.

If you are attending court and you fear for your safety, request the court implement a safety plan whereby you enter and exit the court at different times to your former spouse and remain in a safe room during waiting periods.

8 Notice

**Tell your ex-spouse that it's over AFTER
you have prepared for separation**

We strongly recommend you do your due diligence planning for your separation BEFORE you let your spouse know it's over. It's a lot easier to collect the things you need, to set yourself up financially and logistically, before your spouse catches wind. Imagine trying to withdraw cash at an ATM one day and there are no funds left in the joint account! Review all the 10 steps in this checklist first before announcing your separation.

Once you have decided the relationship is over on a final basis, communicate this to your ex clearly. If it's too difficult to do it directly, write a brief email or letter. The date of the actual separation is important for legal purposes, so it is helpful to be clear about this. If you are not in fear of danger, it is helpful to let your ex know where you will be residing and if you have children, what your plans are for sharing their time with your ex. You would be surprised at how many times the spouse on the other end will dispute the actual date of separation.

If you are not sure you really want to separate, contact a relationship therapist or counsellor who can assist you.



9 Children

Have a plan about who the children will reside with at least on a temporary basis

You may be unlikely to completely agree on who the children are going to live with long term or how much time they should spend with each parent, but you will need to have a temporary arrangement in place whilst all those details are being considered. Just start with the bigger issues such as where will the children live, how can they have quality time with the parent they are not living with, are there any safety issues that need to be considered?

Always keep in the forefront of mind What is in the children's best interests? It's irrelevant whether your former spouse has a new boyfriend and you don't like him – unless the boyfriend poses a risk to the children. The Family Court aims to ensure that children get to have a meaningful relationship with both parents and this is balanced with the need to keep children safe from risk.

Generally, if there has been one parent who has been the primary carer throughout the children's lives, then it may be sensible that the children live with that parent to start with while they adjust to a new routine and a residence missing one parent, unless there is an unacceptable risk of harm in that parent's care. The age of the children will be relevant in determining whether they are able to have overnight stays or how many overnight stays they might be comfortable with within a week.

Often it is better to try and sort these sorts of issues out in writing via email, rather than face to face or via telephone. Things will be emotional between you two but this isn't the time to write a diatribe. Keep it brief, try and use neutral language, and set out your views about this in point form. Having an informal arrangement in place initially is a good idea before signing a parenting plan or court orders - this allows you to test the arrangement and see if it works for everyone. Also, you do not want to sign an untested parenting plan because if you go to court, the court will need to take that parenting plan into consideration when making parenting orders.

If you simply cannot agree on a way forward, seek the assistance of a family dispute resolution (FDR) practitioner or private mediator.

10 Communication

Be aware of the effects of written communication

It's a very good idea to keep communications in writing if possible as this will give you a record of agreements, disagreements and important information that may be useful for referral in the future. This is particularly a good idea when making arrangements for the children as you will have a record of what has been agreed to.

Conversely, don't use Facebook or other public forums to air your displeasure with your former spouse or to allege they have committed a wrong-doing. It's not helpful to you or your children, and you may be in breach of the Family Law Act which prohibits publishing of information from court proceedings.

If you are receiving intimidating messages or the number of the messages received is so frequent that it is harassing you, report this to the police.

It is preferable that you keep communication only to important matters unless you have a very good co-parenting relationship. Remember that you do not have to respond to every single message. If the messages you are receiving are criticisms of you and your parenting, avoid trying to defend yourself by responding to criticism and eliminate the word sorry from your vocabulary. Ensure you keep records of all communications.

You may want to consider using a Family Law app which monitors the tone of messages. There is usually a cost for subscribing to this type of service.





**Questions?
Contact us.**

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