

Legal Costs

What will my separation cost?

Aneta Dimoska Di Marco
PRINCIPAL



Guideline

For general information purposes only

The following guide is given as general information only and may or may not be suited to your specific needs. Always seek legal advice to ensure that your particular circumstances are met.

Book an [INITIAL FREE CHAT NOW](#)

Or email us at info@heraslaw.com



Avoiding litigation costs

If a dispute proceeds to court litigation, the costs of separation can be intimidating for some people. The most effective means of avoiding litigation costs is to avoid litigation altogether. A survey by the Australian Institute of Family Studies of 6000 separated parents identified just 3% of separated parents used the Courts to make parenting arrangements.*

You may be able to avoid litigation by:

- receiving legal advice early before you separate
- seeking the advice of an accountant and financial planner
- for parenting, trial a parenting arrangement before committing it to paper
- engage a mediator who has a good track record of settling matters and commit to several sessions if necessary
- plan with your partner during the relationship or prior to entering the relationship how you will divide assets and parenting responsibilities in the event of separation
- avoiding inflaming the situation by focusing on blame or being too rigid
- keeping negotiations in perspective (e.g if you are arguing over a 30-minute difference in changeover time and the child is 10 years old, is it worth going to court?)

However, there are certain parties or circumstances that have complicating factors where litigation may be the only resolution:

- The separation is highly acrimonious and the parties are finding it hard to disengage from each other and avoid conflict
- One of more of the parties has certain personality traits that lend themselves to litigation
- There are complex issues such as drug/alcohol use, mental health, gambling, other addictions, abuse, or safety concerns
- There is another reason that the matter needs to be considered by the court urgently e.g. risk of child abduction

* Parenting arrangements after separation: Evidence Summary (October 2019)
Australian Institute of Family Studies. <https://aifs.gov.au/research/research-snapshots/parenting-arrangements-after-separation>.

Expenses of litigation

If you have tried everything but can't resolve the matter or your matter is not appropriate for mediation so court is the only option, then you will need to plan for litigation costs and expenses.

These include:

- professional fees to your lawyer
- possibly professional fees to a barrister if the matter proceeds to hearing
- expenses that your lawyers incur on your behalf with third party suppliers, known as "disbursements"
- Internal expenses of the lawyer e.g. photocopying, postage
- court fees

Some lawyers may ask you to pay for disbursements directly to the supplier or to provide a retainer in anticipation of expenses and legal fees. These may include, for example, property/ASIC/person searches, court filing fees, process server fees, expert fees, witness expenses, transcript expenses, and barrister's fees.

Professional Fees

Most lawyers charge either an hourly rate for the amount of time they take to complete a task or they provide a fixed fee estimate based on their past experience of how much time they expect a task to take or how complex it is.

Professional fees can range usually between \$300 and \$800 per hour depending on the experience of the lawyer. This may seem high but the fee is commensurate of the high level of skill and knowledge that goes into conducting a family law matter, as well as for the degree of legal risk that the lawyer takes on to conduct your case. That is, the fee must appropriately cover the lawyer's insurance risk.

I understand many clients shop around for lawyers who will charge a lower hourly rate but this is not a clear indication of how much time the lawyer will take on the task. An inexperienced lawyer may take twice as long as a more experienced lawyer and the cost may be the same or higher.

Some lawyers offer low-cost fixed fee arrangements. These arrangements are usually limited to where agreements have been achieved between parties. Here the lawyer's work consists of drafting documents to confirm the agreement and the provision of legal advice about the effect of these documents.

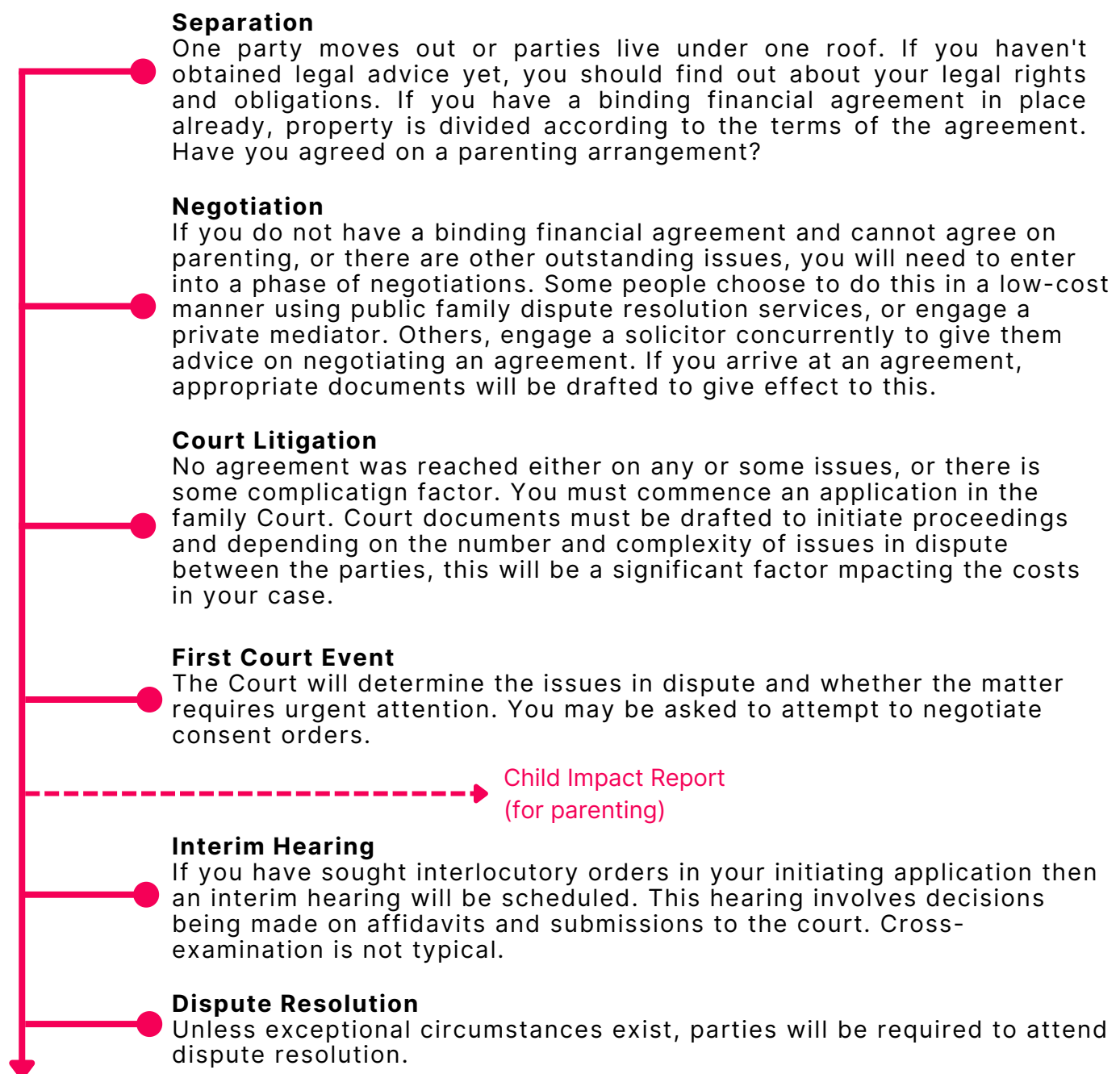
When are low-fee arrangements not suitable for a case?

If your matter has one or more of the following characteristics, you will need legal advice and support/representation beyond mere drafting skills:

- any time your matter proceeds to litigation or you think it may proceed to litigation
- if your matter involves complicating factors such as those set out on page 2
- you think you have an agreement but really there are lots of details that still haven't actually been settled on
- your matter involves complex property or financial matters including trusts, companies, businesses, tax, creditors, bankruptcy

The Separation Pathway

The stage at which your matter is resolved with either court orders or an agreement will give you an idea about the costs associated with your family law matter. The timeline below shows the typical pathway for separated parties including the case management pathway taken by the Federal Circuit and Family Court of Australia.



continues next page..

Costs During the Separation Process

continued from previous page..

Collecting evidence for trial

Any expert reports and valuations for assets are conducted at this stage.

Family Report
(for parenting)

Compliance Readiness Hearing

Trial plan confirmed and certificate of readiness filed. Witnesses should be confirmed and barrister engaged.

Case Management Hearing (if necessary)

Make appropriate directions to facilitate the timely and efficient conduct of the final hearing

Final Hearing

Because a number of matters may be listed on the same day, to account for matters that may be resolved on the day of court, the Court may not reach your matter. You may be diverted to engage in further dispute resolution and relisted.

Judgement Delivery

There may be a waiting period before you receive your judgement.

Post-Hearing or Post-Settlement Matters

Particularly if you have property or financial orders, there will be matters that need to be dealt with to ensure the orders are complied with.

Variables which increase litigation costs

You can estimate what your costs will be by estimating the amount of work (i.e. number of hours) your legal representative/s will undertake from one stage to the next. For example, if you engage a lawyer to advise and represent you in negotiations, they may need to attend to the following tasks (not exclusive):

- understand the history of your relationship,
- review any exchanged documents,
- correspond with the other side, give notice of the dispute, engage in negotiations,
- deal with any issues in dispute that may arise during this time,
- prepare and attend for mediation, and
- then draft/review agreements/orders and provide you with advice about their effects.

Some of the variables which may increase your legal costs during the court process include:

- how you and the other party conduct the case
- whether you require an expert report or specialist advice
- whether forensic investigations are required
- the number and duration of communications your lawyer has with you and third parties
- your prompt and efficient response to requests for information or instructions
- whether your instructions are varied
- whether documents have to be revised in light of varied instructions
- the lawyer and any other persons that your lawyer must correspond/communicate with, and the level of co-operation of the lawyer's client and other persons involved
- changes in the law
- the complexity or uncertainty concerning legal issues affecting your matter
- whether any new legal or ancillary issues arise requiring further attention

Experts

Family Court decisions are made on the evidence that you can produce to support your case. Running a successful family law case requires objective evidence and this can come from documents you may be able to collate, witnesses, or expert opinions. Expert opinions provide some of the strongest forms of evidence and you are likely to need an expert to provide an opinion about a contentious matter.

The types of experts that are commonly engaged in family law matters include:

1. property or business valuers to identify the correct value of property and businesses
2. medico-legal experts to inform claims impacting earning capacity
3. remuneration experts to provide advice about earning potential within an industry,
4. psychologists and psychiatrists to advise about parenting capacity or children issues
5. tax experts
6. forensic accountants to examine finances or business operations
7. superannuation valuation experts

The cost of these reports can range from \$500-\$750 for a property valuation report to \$15,000-\$25,000 for a forensic accountant report.



**Questions?
Contact us.**

www.heraslaw.com.au

info@heraslaw.com.au