

# Article

## FAMILY LAW



## 10 Ways to Kick Start Your Separation

By Joanne Cliff

### Preliminary

*Going through a separation is a difficult time for most people. However, whether you choose to end your relationship or the decision is made by your partner, there are several things you can do that will assist you in moving forward.*

*Take the time to make a plan of things you need to do. This will help you see your options. Things to consider are:*

- This article is about property settlement, not children's issues.
- The Court treats de facto relationships the same as a marriage.

### 1. What to tell the children?

It's trite to say that separation is stressful and disruptive for the whole family, including children. One of the most difficult conversations early on in a separation is what to say to the kids.

Children need to be told that a separation has happened as it will be obvious in circumstances where

usually one parent moves out of the family home. The amount of information to give to children will depend on their ages - clearly, less for younger children. It's best if both parents can sit down together with the children to explain the separation. Hopefully, parents can work out a plan together so that there is as little disruption to the children's lives as possible.

Avoid things such as:

- discussing the circumstances leading to the split;
- blaming and criticising each other; and
- being emotional in front of the children.

It is important to tell the children that both parents love them and that they did not cause the split. Discuss things together such as:

- where they will live;
- who will pick them up from school; and
- how often they will see the parent who has left the family home.

Try to stay focused on the future.

Be responsive to the children's emotions, and if you notice that a child's behaviour has changed for the worse since the separation, then organisations such as Relationships Australia and Anglicare run courses to help children deal with separation and for parents to be able to help children come to terms with it.

### 2. Who else do you tell?

It's natural that family and friends are told that you and your partner have separated, but informing other parties is also a good idea. The children's school is important as both parents will want to continue to receive information about school progress, events and activities. Similarly, the GP and any other relevant medical specialists should also be advised. Providing notification to Centrelink of your change in circumstances is also essential as there is likely to be financial ramifications. You want to ensure, as best you can, particularly in the early stages of separation, that you receive all the financial assistance that is available to you by way of government benefits.

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### 3. Accommodation

Probably one of the earliest decisions to be made is who is staying in the family home and who will leave. A decision that may follow will be whether the property is to be sold or retained by one of you. Some factors that may influence this may include:

- whose name is on the certificate of title; and
- who has the majority of the care of the children?

Generally, the person who owns the home will remain in the home and continue to service the mortgage – if there is one. The other one then finds rental accommodation in the interim period before settlement. The person who has the majority of the care of the children may also try to negotiate to stay in the home, so it causes less disruption for the children.

If you have a mortgage, it might be worthwhile asking your bank for a moratorium (a postponement of debt payment) for a period. This will provide some relief while you determine what to do with the family home. It may be that neither of you can afford the mortgage payments into the future, so the property needs to be sold. If this is the decision, you should try to agree on a real estate agent and take the agent's views about whether repairs to the home are required before sale. Be wary of spending money on repairs as they can be costly and should only be considered if it significantly increases the home's value. Real estate agents can also provide a free appraisal of the value of the home. This can be helpful when you're trying to agree on the

value of one of the most significant assets of the relationship. If you cannot agree on the property's value, an agent will need to be jointly retained to provide a written valuation. This costs approximately \$880.00 inclusive of GST. Frequently valuations occur when you each have retained lawyers.

If you wish to keep the home, but the mortgage is in both names, you need to speak to the bank about whether it will lend you the funds, remembering that some cash payment will likely have to be made to the other person who doesn't remain on the mortgage.

If you rent and the separation is causing financial hardship, contact Centrelink because they can help with rent assistance.

If you were renting with your ex-partner and remain in the rental, you should notify the landlord and remove the ex-partner's name from the lease. The same should apply for joint bills, and it's also a good idea to change things like email passwords.

### 4. Living under the one roof

Due to the financial burden of paying a mortgage and/or rent, the law recognises that parties may remain in the home although they consider themselves to be separated. In addition to the financial advantage, it is less disruptive for everyone, including children. For the law to accept that you are separated but living under one roof, you need to ensure that all aspects of your life, both financial and domestic are separate. For more information, please read our article on this topic by [clicking here](#).

### 5. What do we own? What do we owe? Assets and debts.

To achieve a financial settlement that will make you financially independent from your former partner, you should write a list of your assets (property) and liabilities (debts). Where possible, gather together all documents which support the value of assets and debts. The Family Law Act 1975 (Cth) sets out the law for property settlement. The word "property" has a broad definition. It includes a home, motor vehicles, furniture, shares, investments, investment properties, money in the bank, crypto currency, a business, and superannuation. It also covers financial resources, including a recent inheritance, money received from a car accident or worker's compensation claim, and distributions from a family trust.

Liabilities cover all debts, including a mortgage, personal loans and credit card debt.

The aim is to include everything and to agree on values. Include a list of all individual and joint bank accounts. Generally speaking, you should have documents that support the value of an asset or debt such as an appraisal, valuation, superannuation, bank statements, and mortgage liability. Income/salary is not considered property, but your income is used to determine your ability to support yourself financially, so tax returns covering the last three years prior to separation should be obtained, as should tax returns for businesses and trusts.

### 6. Bank accounts

It is common for couples in a relationship to have at least one joint bank account. By law, this

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means that you each own the whole amount in the account (not 50/50). When separation occurs, often, one partner will withdraw the whole of the funds in the account. This is not illegal, and the bank will not be liable to repay these monies if it happens. An option can be to agree to split the funds at the time of the separation. If agreement cannot be reached about what to do with the funds and you're concerned that your ex-partner may withdraw or spend the money, then talk to the bank about freezing the funds or requiring joint signatures before anyone can withdraw funds. It is important to keep in mind that if funds are taken from a joint account without the other partner's consent, the court has the power to add the amount back into the asset pool when a financial split is ordered.

It's best if you do not withdraw funds from your ex-partner's account, even if that was an arrangement prior to the separation unless you have their consent. Remember that separation changes everything, and do not assume that these arrangements will simply continue

### 7. Speaking to the bank

A meeting with the bank is one of the things that should be on your to-do list shortly after separation.

You want to be making informed decisions, and until you speak to the bank, you will not be aware of your options. There is little point in deciding to keep the home and payout your former partner if the bank does not agree to loan or

extend your mortgage. The bank will tell you if it is prepared to accommodate an increase in debt. If it is not, then selling the family home may be the only option moving forward.

The bank may agree to a reduction in payments or a freeze of payments once they are aware that the relationship has broken down.

If there is a redraw facility on the mortgage loan, consider asking the bank to ensure joint signatures are required before it can be used.

### 8. Do you have an accountant?

If you have a business or a trust, an accountant can be a valuable resource to obtain information. This can include values or levels of debt, including tax debts. An accountant can also assist in supplying you with documents such as personal, business and trust tax returns.

### 9. Keep in mind a recent inheritance or personal injury payout

Until a property settlement is negotiated, any inheritance, workers compensation payments, or other personal injury payments obtained during the relationship or after separation need to be included in the list of assets with accompanying details of the amounts received and documents supporting the same. It is not possible to quarantine these payments, but it does not necessarily mean that your ex-partner is entitled to an equal share. It will be a matter for negotiation.

### 10. Remember to look after yourself

Separation is difficult and stressful. If you feel that you are not coping, then consult your GP. Try not to become isolated and continue to have contact with friends and family.



MORE INFO

**Joanne Cliff** Director

p: +61 8 8124 1803

[joanne.cliff@dwfoxtucker.com.au](mailto:joanne.cliff@dwfoxtucker.com.au)

**DW Fox Tucker Lawyers**

L14, 100 King William Street, Adelaide, SA 5000

p: +61 8 8124 1811 e: [info@dwfoxtucker.com.au](mailto:info@dwfoxtucker.com.au) [dwfoxtucker.com.au](http://dwfoxtucker.com.au)

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