

Our legal practice and your family and business on the mid north coast – Woolgoolga, Coffs Harbour, Bellingen, Urunga Nambucca Heads and Macksville – Team Legal Mobile – we come to you – or you come to us at Park Beach Homebase 252 Pacific Highway Coffs Harbour or at 24 Thornbill Glen Nambucca Heads. There is no extra charge for our mobile legal service and the first interview is free!

Marriage Breaking Down?

Is divorce the only answer?

If your marriage has reached a stage where it appears to have broken down, you should try counselling before taking the step of separation.

Reconciliation and separation counselling services are offered by a variety of organisations such as Relationships Australia, Unifam, Centacare and Interrelate. Counselling may be undertaken at any stage in your relationship and all discussions are confidential. The earlier you have counselling the better. Mediation is also available to assist parties to resolve disputes over financial matters, property and children.

If counselling doesn't work, how do I get a divorce?

The only ground for divorce is irretrievable breakdown of marriage. To show the marriage is irretrievably broken down, you and your spouse must have lived separately for at least one year.

Following the year's separation, either spouse can apply to the Family Court or Federal Magistrate's Court for a divorce. Applicants pay a filing fee to the court for dissolution of marriage unless they are eligible for an exemption.

We can't afford to have two homes

It is possible for you and your spouse to live separately and apart under the same roof during the separation period.

If you intend to live separately in the same home, you should consult *Team Legal* first, because living in the same home complicates a divorce. Someone who knows you and your spouse may have to tell the Court that you have lived separate lives while still under the same roof. You and your spouse should not sleep together or socialise together, and domestic services such as cooking, washing or ironing should only be done for the other if it is understood and acknowledged that such help is given for the sake of practicality or convenience.

Do I need a lawyer?

In straightforward cases where there is no dispute about children, it is permissible and usually simple to obtain a divorce without using *Team Legal* as your solicitor.

You will need *Team Legal* if you and your spouse are in dispute about a child or child support, because the Court will not normally allow the divorce to become final unless it is satisfied that proper arrangements have been made for children under 18 years.

Before you try to settle any disputes about property and financial matters, you should obtain advice from *Team Legal* about your legal rights. Both parties usually need to have independent legal advice before a Court will make a financial settlement legally binding. You are usually required to attempt to settle matters by negotiation, counselling, mediation, or conciliation before you start court proceedings.

Who will the children live with?

How are parental responsibilities shared?

The short answer is ‘as agreed between the parents’. Parents should try to agree on parenting orders or a parenting plan for their children when they separate. If you and your spouse cannot agree who the children will live with, you will need legal advice. The sooner you can reach agreement the sooner things will settle down. Agreement can best be reached using negotiation, counselling, mediation or conciliation.

When the Court makes order, the best interests of the child is the most important consideration, taking into account, among other things: the age, sex, background, maturity and any expressed wishes of the child; the child’s relationship with each parent and siblings; the effect on the child of separation from either parent; the parents’ attitude to the child and to the responsibilities and duties of parenthood; the capacity of each parent to provide adequately for the physical, emotional and intellectual needs of the child; and whether the child has been involved in or witnessed domestic violence.

If the children do not reside with you, you should discuss arrangements for them to have contact with and visit you. Contact is the child’s right, not the parent’s, and in disputes about contact you will normally be granted a contact order unless the Court believes that contact will not benefit the children.

Shared parenting or joint residence is becoming more common and part of the philosophy behind recent changes to family law. For shared parenting to work, the time spent with each parent does not have to be equal.

Do I have to pay child support for my children or maintenance for my spouse?

Both parents are responsible for the financial support of their children until each child reaches the age of 18 or until completion of the school year in which the child turns 18. Child support can be paid as the parents agree or the Child Support Agency can collect it from the other parent.

The Child Support legislation is complex. If you wish to know what amount is payable, you may contact the Child Support Agency or speak to *Team Legal*.

In relation to spousal maintenance, each spouse is expected to try to support themselves after separation. Maintenance may be payable if one spouse is unable to meet their own needs and the other spouse has the capacity to assist. Common examples are a spouse having the care of young children or a spouse being unable to work because of a physical disability while the other spouse has a high income and an ability to pay maintenance.

How will our property be divided?

Most settlements are resolved by agreement with 'consent order' being made by the Family Court, Federal Magistrate's Court or the Local Court.

A property settlement can be finalised at any time after separation and before either spouse applies for divorce. However, an order for property settlement or spousal maintenance must be sought within 12 months of the divorce, or you will need the Court's permission to apply out of time.

In deciding what is a fair division of the property, *Team Legal*, and the Court, will take into account:

- Each spouse's contributions to the family and to the acquisition, conservation and improvement of the property during cohabitation. In most cases caring for the family and home is considered to be of equivalent value to earning income;
- The present and future income, needs and responsibilities of each spouse.

All property and financial resources belonging to you and your spouse are relevant and can be dealt with by the Court, including interests in companies, family trusts and superannuation.

Financial Agreements

Married and divorced couples can enter into binding financial agreements before or during marriage or after separation or divorce.

To be binding, each spouse must obtain independent legal advice about the agreement from a lawyer before they sign it.

How will *Team Legal* help me?

Team Legal can:

- Act for you on your divorce;
- Advise you about your rights regarding children, maintenance and property;
- Check any agreement you have made and tell you how it can be changed or enforced;
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- Advise you about the possibility of resolving or narrowing issues in dispute by using services such as counselling, conciliation and mediation;
- Negotiate a settlement of financial or parenting issues on your behalf;
- Advise you if you may qualify for Legal Aid.
- Prepare a Financial Agreement or Parenting orders or a Parenting Plan on your behalf.
- Represent you in Court if there is a dispute about children, property, maintenance or child support.