

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. The earlier you have counselling the better. Reconciliation and separation counselling services are offered by a variety of organisations such as Relationships Australia, Uniting Care Unifam, Centacare, Interrelate and the Family Relationships Centre. Counselling may be undertaken at any stage in your relationship and all discussions are confidential.

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

The only ground for divorce is irretrievable breakdown of the 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 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 a Solicitor first, because living in the same home complicates a divorce. It may be necessary to give special evidence to the

Court about the details of your living together, although you are separated. 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 to obtain a Divorce?

In straightforward cases where there are no children or no dispute about children or no dispute between the parties and the Divorce is by consent, it is simple to obtain a divorce without using a Solicitor.

You will need a Solicitor if you and your spouse do not seek the Divorce by agreement and there is a child under the age of 18. The Court also has the discretion not to allow a Divorce to become final unless it is satisfied that there are proper arrangements made for children under 18 years.

Before you try to settle any dispute about property, financial and children's matters, you should obtain advice from a Solicitor about your legal rights. Both parties usually need to have independent legal advice before a Court will make a financial settlement legally binding.

Who will the children live with?

How are parental responsibilities shared?

Parents should agree about parenting arrangements for their children. Parents can, if they wish, make a parenting plan or have Orders made by consent with respect to the arrangements for their children. If you and your

spouse cannot agree about arrangements for the children you will need legal advice.

You should contact a Family Relationships Centre initially for assistance in counselling, mediation and conciliation of any issues between you and your former partners about your children. The Family Relationships Centre's number is 1800 050 321.

The sooner you can reach agreement the sooner things will settle down. From July 2006 Family Relationships Centres began opening throughout Australia offering information to separating couples. Agreement can best be reached using negotiation, counselling, mediation or conciliation.

There are other organisations that offer counselling services such as Relationships Australia and Unifam.

In determining what is in the best interests of a child, the two primary considerations are the benefit to the child of having a meaningful relationship with both parents and the need to protect the child from physical or psychological harm arising from abuse, neglect or family violence. Additional considerations include the age, sex and maturity of the child, views expressed by the child, the relationship of the child with each parent and other relatives, the likely effect of separation for the child, the willingness and ability of each parent to facilitate a continuing relationship between the child and the other parent, distance and travel difficulties, the capacity of the carer, the culture, background and lifestyle of the child and carers, their attitude to the child and the responsibilities of parenthood, and any family violence involving the child.

Parents must now consider if it is reasonably practicable and in the best interests of the child for

the child to spend equal time with each parent, or substantial and significant time with each parent or other relative. Parents should also make joint decisions in consultation with each other on matters such as education, religious and cultural upbringing, the child's health, the child's name and changes to the child's living arrangements.

If the children do not live with you, you should discuss arrangements for them to spend time with and have communication with you.

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 laws are complex. If you wish to know what amount is payable, you may contact the Child Support Agency or speak to a Solicitor who practices in this area.

In relation to spousal maintenance, each spouse is expected to try to support himself or herself 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 orders' 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, your Solicitor, and the Court will take into account:

- each spouse's contributions to the family and to 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 Bell Lawyers can help you?

We 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;
- 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;
- Represent you in Court if there is a dispute about children, property, maintenance or child support.

Please do not hesitate to contact Anne Marie Murphy



Please contact Anne Marie Murphy on:

Phone: 02 4734 9333

Fax: 02 4734 9300

E-mail: info@bell-lawyers.com.au

or visit our website at:

www.bell-lawyers.com.au