

A WIRE Guide to Separating

# Separation and Property



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## How does it work?

This booklet is intended as a guide only. Readers should not act on the basis of any material in this publication without getting legal advice about their own specific situation first. WIRE expressly disclaims any liability to any person that relies on the contents of this publication. The purpose of this booklet is to act as a guide when separating, providing information of Victorian family law. The checklists throughout this booklet act as a helpful reminder to collect personal information when seeking legal advice.

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# Contents

Introduction .....	1
Am I entitled to property settlement? .....	2
What kind of relationships are there? .....	3
What is property? .....	5
The family home. ....	7
Superannuation .....	8
Separating debts .....	10
What is financial abuse .....	11
How can we formalise a property settlement? .....	12
Making an agreement on property settlement .....	14
<b>Before going to court</b>	
• Family dispute resolutions .....	16
• Getting help to reach an agreement. ....	17
• What you must do when following ‘pre-action procedures’ .....	18
• Full and frank disclosures .....	18
• When are you exempt from pre-action procedures? ..	19
<b>Going to court</b>	
• Applying for a property order. ....	21
• Court process in property cases .....	22
• Court orders in property cases. ....	23
• Spousal and de facto maintenance .....	24
• Enforcement orders. ....	26
• Attending court .....	27
• Different types of courts and what they do .....	28
Getting Legal Advice. ....	30
Where to go for help .....	34

# Introduction

Often one of the most difficult issues to resolve when separating is the fair division of property. It is important to get legal advice about property settlement, and what you would be entitled to receive. Regardless of the gender or sexuality of your relationship, whether you were married or in a de facto relationship, you may be entitled to apply for property settlement after your relationship ends.

People make decisions about whether they pursue a property settlement for many reasons including safety considerations and their children's financial and emotional needs. These sacrifices can negatively impact individual's financial situations. As a consequence, financial inequity may arise which can become particularly obvious in later life. Therefore, it is always important to get legal advice about what you may be entitled to receive, so that you can realistically plan for the future and have all the relevant information you need to make a decision.

The Family Law Act 1975 (Cth) gives separated couples (married and de facto) certain rights to a property settlement. Under a property settlement the wealth built up during the relationship is divided between the parties.

If you have separated, or are thinking about separating from your spouse or partner, **this booklet can be a useful guide to help explain:**

- how property settlements under the Family Law Act 1975 (Cth) work
- the process of negotiating property settlements
- applying for property orders.

In this booklet, 'property orders' refer to orders made by a court in relation to property, finance and spousal maintenance.



# Am I entitled to property settlement?

Under the Family Law Act 1975 (Cth) married and de facto couples have certain rights to a property settlement. However, the Family Law Act 1975 (Cth) places some restrictions on de facto relationships.

A court will only make a property or maintenance order in relation to a de facto relationship if the court is satisfied that any of the following applies:

- the period, or total periods of the de facto relationship, is at least 2 years
- there is a child from the de facto relationship
- the de facto partner applying to the court made substantial contributions and a failure to make a declaration or order would result in serious injustice to that partner
- the relationship is, or was, registered under prescribed State or Territory law.

If your relationship with your de facto partner does not fall into any of the above categories, you may not be entitled to apply for a declaration or order in relation to property under the Family Law Act 1975 (Cth). In this case you should get legal advice about whether other remedies or legal avenues are available to you.

# What kind of relationships are there?

A **‘de facto relationship’** is a relationship between two persons where:

- the persons are not legally married to one another and
- the persons are not related by family and
- they have a relationship as a couple living together on a genuine domestic basis.

De facto relationship extends to cover most type of relationships, regardless of gender or sexuality.

More information regarding LGBTQIA+ and same-sex de facto relationships can be found visiting the following links:

- [Same-sex and defacto couples and their families \(Fitzroy Legal, at fls.org.au\)](#)
- [Federal Circuit and Family Court of Australia](https://www.fcfcoa.gov.au/fl/fp/overview), visit at <https://www.fcfcoa.gov.au/fl/fp/overview>

It can also apply where one of the partners is still legally married to another or in de facto relationship with another person. De facto relationships can come in all shapes and sizes (e.g. you may be living together or separately), but whether you are legally considered a couple, depends on various factors (see section 4AA(2) of the Act).

The right to marry is no longer determined on sex or gender. Marriage is a legally binding contract recognised by the [Marriage Act 1961](#) and [Marriage Regulations 2017](#). For more details on what is legally recognised as marriage you can visit, Federal Register of Legislation website, [legislation.gov.au](https://www.legislation.gov.au).



## Myths about divorcing

**Myth:** We are not divorced so we cannot settle our property yet?

**REALITY:** Married couples can apply for property settlement before they are divorced.

Timing is important as there are some legal hurdles to property division that come up a year after a divorce or two years after the separation of a de facto couple — make sure you get legal advice as soon as possible.

Note down the date of your separation in a safe place. Separation is when one person in a relationship (it doesn't necessarily have to be both of you) considers the relationship ended, and no longer wants to remain a couple.

# What is property?

Property includes assets (things you own) and liabilities (debts and property you owe money on). Property can be owned individually, jointly (with another person/s), through a family trust or family company.

Property includes anything of value, such as:

- real estate e.g. family home
- cash
- bank accounts
- investments
- insurance policies
- shares, stocks and bonds
- superannuation
- any other assets e.g. cars, furniture or jewellery
- debts e.g. mortgages, loans, credit cards and personal debts
- other entitlements e.g. inheritances, long service leave and personal injury claims.

All property can be considered as part of property settlement, even if it has been recently sold or given to someone else, such as a sibling or parent.

It may not matter:

- whose name the property is in
- who purchased the property
- who acquired the debt.

Where the value of any property cannot be agreed upon, it is important to arrange an independent property valuation.

## Glossary

**Caveat** - conditions, limitations, or specific provisions

**Proprietary** - having ownership or owning something

**Debts** - money owed

**Liable** - to be legally responsible for something



## Myths about dividing property

**Myth:** Because it's in their name, they own the house.

**REALITY:** Property includes all assets that are owned individually, jointly or by a family trust. If the house is in your partner's name, it will still be considered part of the settlement.

However, if your name is not on the property title, you may need to lodge a caveat or take other legal action to prevent it being sold before final property settlement.

**A caveat** is a document that any person with a legal interest in a property can lodge at Land Victoria. See WIRE's information booklet, [Leaving a relationship under 'Getting my finances in order' page 9](#), at [www.wire.org.au](http://www.wire.org.au)

# The family home

If you have to leave the family home for any reason, you will not lose your proprietary interest in the home when you leave. Whether your name is on the family home title or not, you may still be entitled to a percentage of the home.

If your name is not listed on the property title, you can lodge a caveat with the Land Titles Office so that the property cannot be sold without your prior knowledge and consent before the final property settlement. Once a caveat is lodged you will be notified of any attempts to dispose of the land, but you must take additional steps to protect your interest in the property. If you are notified, seek legal advice immediately. If you think your partner may try to sell the family home before you have agreed on a property settlement, you should apply for an urgent property order from the court.

Even if your ex-partner does not own the home or property in their name, and it is owned by third person, such as a relative, you may have a right to a share of that property in certain circumstances.

What happens to the home will depend on the agreement you make with your ex-partner or spouse, or a court order. It may be decided that one person will retain ownership of the home, in exchange for other assets or property. This may mean that the person who retains ownership of the home buys their ex-partner's share of the house or re-finances the mortgage into their sole name.

## Rental Checklist

- ☐ If you are renting your home, find out if your name is on the lease.
- ☐ If you are leaving your rental home due to family violence, but hope to return and live there safely at a later date, contact the Tenants Union about your options before you leave. This helps ensure that you have the right to tenancy and are not left homeless.
- ☐ If you are leaving a rented property and do not wish to return, you may need to change the lease or risk being held liable for any damage or rent arrears caused by your ex-partner. Contact the Victorian Civil and Administrative Tribunal (VCAT) or the Tenants Union.
- ☐ If you are staying at the property, it is important to ensure your name is on the lease. Contact VCAT or the Tenants Union.

## Superannuation

As part of a property settlement, separated couples can include the value of their superannuation entitlements. While superannuation can be a large asset in property division, it cannot be converted to cash as it is still subject to superannuation laws.

An agreement or court order can be made to split the superannuation, where a portion of one partner's superannuation entitlement is transferred into the superannuation account of the other partner. This usually means that you cannot physically access the superannuation until the policy can be paid out (e.g. when you reach retirement age).



## Myths about superannuation

**Myth:** It's their job and their superannuation — I have no claim on that

**REALITY:** Superannuation is included as part of the overall property assets. Since December 2002, separating married couples have been able to split their superannuation in the same way as other assets.

Primary caregivers take time out of the workforce to have and care for children, which limits their working capacity due to primary caregiving and household responsibilities.

Because of gender pay gaps people who identify as male (assigned at birth) earn more for equivalent jobs than women, non-binary and gender diverse people. As a direct consequence women's and gender diverse people's superannuation capacity is often impacted and can be less.



# Separating debts

If you and your partner have joint debts, these should ideally be worked out at the time of settlement. It is important to know that even if you have not benefited from borrowing the money, you may still be liable for half or even all of the debt. If, however, the loan was contracted unfairly there may be something you can do.

## Finance Checklist

- ☐ Seek legal advice about whether to freeze joint accounts at banks and other financial institutions
- ☐ Open your own bank account at a bank, credit union or community bank; ensure you ex-partner cannot access your account via phone or internet banking
- ☐ Redirect you pay and other income into your own account, if you are receiving [Centrelink](#) payments, notify them of the changes
- ☐ Consider your financial situation and draw up a budget, you can get help from a financial counsellor or visit, [Moneysmart](#).
- ☐ Do you need to change your will? Have you nominated your partner as a beneficiary? Or do you need to make a will? Making a will gives you control over the distribution of your property and assets when you die.

# What is financial abuse

Financial abuse is a form of family violence. You are experiencing financial abuse when your partner uses money and other things that you might both own, to control you and have power over you.

Your partner's behaviour may include:

- controlling your access to finances e.g. cash, bank accounts and benefits or pensions
- refusing to contribute financially to you or the family
- doing things that cost you or the family money; taking out loans and running up debts in your name
- stopping you from working or studying
- abusing the Child Support and Centrelink system to penalise you financially, even after you have left the relationship.

Victorian law now states that financial abuse is a form of family violence and includes socially and financially controlling behaviour. [For details read WIRE's information booklet, Money problems with your partner.](#)

It is also important to tell any lawyer you have engaged with that you are experiencing financial abuse, as your ex-partner may use the court process to harm you financially and emotionally. Some lawyers may not fully understand financial abuse in family violence; **if you are concerned about your lawyer or how to find an appropriate one, contact WIRE for more information.** [See page 36 'Where do I go for help?'](#)

# How can we formalise a property settlement?

If your relationship ends, property may be divided between you and your ex-partner by:

- **agreement** — either informally, or by a written binding financial agreement or consent order
- accessing a **family dispute resolution** service or practitioner to help reach agreement
- applying to court for **property orders**.

How you formalise a property settlement with your partner will depend on your individual situation and what would work best for you both. Helpful resources include [AMICA](#) for dispute resolution and [FCFCOA](#).

## Separating without going to court

If you and your ex-partner or ex-spouse can work out and agree on a property settlement, you do not have to go to court. Going to court can be an expensive, lengthy and stressful process. When you reach an agreement, make sure it is **legally binding** (see next section). Otherwise, if there are difficulties later on, the agreement may not be legally enforceable. Even if you and your ex-partner are on good terms, always get independent advice from an experienced family lawyer or community legal service before you start negotiating or signing anything.

If you are in a situation where you feel like you have to sacrifice your property entitlements to avoid further conflict or the costs of legal advice, seek legal advice. Seeking legal advice does not mean that situation will ‘get nasty’ or go to court; it means you are being properly informed about your rights and entitlements. Think about what and why you are compromising, will it significantly disadvantage you later in life?



## Myths about going to court

**Myth:** The only way property can be settled is through the courts, which is complex, lengthy and expensive.

**REALITY:** Majority of property disputes are settled out of court. It is important to know that you must document your agreement properly or there will be problems enforcing it legally.

For information about dispute resolutions you can access the Federal Circuit and Family Court website, [FCFCOA Family Dispute Resolution](https://www.fcfcoba.gov.au) ([fcfcoba.gov.au](https://www.fcfcoba.gov.au)).

# Making an agreement on property settlement

If you and your ex-partner or ex-spouse agree about how your property will be divided, you can:

- **make an informal agreement** — This can be written or verbal (spoken). This is not recommended as informal agreements are not enforceable by a court and may not be legally recognised. It may not prevent either party from applying to a court for a property settlement in the future.
- **make a ‘binding financial agreement’** — A binding financial agreement is a written document made before, during or at the end of the relationship about property settlement and financial support when separating. This does not have to be approved by the court; but to be legally enforceable both people must sign it and it must contain a statement that each person received independent legal advice covering how the agreement will affect their rights and how it benefits them (or not) prior to signing. In circumstances such as fraud or a major change in children’s care or welfare, the court can declare the agreement invalid and set it aside (cancel it).
- **apply to a court for a ‘consent order’** — A consent order is an agreement that can be negotiated between ex-partners regarding the financial and property settlement and/or ongoing financial support.

An application for consent orders is filed at the court, and once approved by the court, consent orders are legally binding and enforceable just like any other court order. The court must be satisfied that the agreement meets the legal requirements under the Family Law Act 1975 (Cth) before it will make a consent order. You can download an [‘Application for Consent Orders Kit’](#) directly from the Family Law Courts website at <https://www.fcfcga.gov.au/>

## Changing or cancelling consent orders

Consent orders made in property disputes are difficult to change. To 'set aside' (cancel) consent orders in property disputes you need to prove that:

- there has been a miscarriage of justice due to fraud, duress or suppressed evidence/information
- the orders are not practical to carry out (not just inconvenient)
- a person has not carried out an obligation imposed by the order
- a major change in your child/children's care and welfare was unforeseen when making the order
- an order has been made for property (gained through criminal activity) to be confiscated by the government
- a person has acted in an 'unconscionable' (unethical or unfair) way.

## Myths about dividing property

### Myth: We have to split everything 50/50

**REALITY:** Family structures can vary, the roles and responsibilities a person adopts in a family structure can significantly impact their contributions. Therefore, it is essential to gather comprehensive information about liabilities involved. Similarly, it's crucial to have detailed information regarding contributions, for example, were you the main caregiver, did you maintain the house or added any renovations that may increase the value of the house. For further information about contributions you can read, 'How does the Court decide financial cases', at [FCFCOA.gov.au](https://www.fcfcoba.gov.au)

# Before going to court

## Family Dispute Resolutions

If you cannot reach an agreement with your ex-partner or spouse, there are steps that must be taken before applying to a court for property orders, this is also known as pre-action procedure/s. These procedures aim to help explore potential areas of resolution and narrow down issues to try and resolve disputes quickly and outside of court. They apply to all parties in property settlement and their lawyers (if involved).

Find further information here: [FCFOA](#)

All parties must make a genuine attempt to resolve any disagreement before applying for property orders, by:

1. inviting the other party to participate in family dispute resolution
2. agreeing to and participating in family dispute resolution services, such as mediation, conciliation or arbitration
3. if family dispute resolution is unsuccessful, contacting the other party setting out the claim and potential options for settlement, and notifying of any future intentions
4. making full and frank disclosure of all relevant materials, facts, documents and other information.

## Getting help to reach an agreement: Family Dispute Resolution

If you are having trouble working out an agreement with your ex-partner or ex-spouse consider using a registered Family Dispute Resolution (FDR) service (e.g. [Relationships Australia](#), [Lifeworks](#), [Government Family Dispute Resolution](#) or a [Family Mediation Centre](#)) or a private FDR practitioner/ mediator to help both parties negotiate a property settlement in a safe and more relaxed environment outside court.

A FDR practitioner/mediator will ensure all parties' views are heard, and all options for agreement are explored. Their role is to help resolve disputes outside court; not to take sides. This can be quicker and cheaper than going to court. You may not need a legal representative; however, it is a good idea to seek legal advice before using a FDR service or practitioner.

### **Have you experienced family violence during the relationship or after it ended? Or feel you will not be able to say what you really want?**

Discuss your concerns with the FDR service or practitioner, so that they can create a safe, fair and appropriate process for both parties where possible. Mediation is not recommended when there is family violence, due to the power and control imbalance. For details visit the Victorian Legal Aids website, Using Family Dispute Resolution, read subheading, '[When family dispute resolution is not appropriate](#)'.

Preparing for Mediation: Tips for people who have experienced domestic violence.

If mediation is not for you, try getting a lawyer to negotiate on your behalf.



# What you must do when following 'pre-action procedures'

At all stages during property settlement, from negotiations through to any court proceedings, you have to ensure that you:

- identify all potential issues as soon as possible and explore options for settlement
- avoid protracted and heated exchanges with the other party
- consider how you communicate with the other party (particularly in correspondence)
- seek orders that are realistic based on the evidence and consistent with the law
- be proportional and try to control costs — it is unacceptable for legal costs to be high in comparison to the property value
- give full and frank disclosure

## What is 'full and frank disclosure'?

All parties to a case have a duty to be honest, sincere and tell the truth, in all circumstances ('full and frank disclosure'.) Which means, if a party fails to make full disclosure, serious penalties can be imposed. The parties must promptly exchange copies of documents in their possession and control that are relevant to the dispute.

In maintenance cases 'full and frank disclosure' includes:

- ☐ tax returns and tax assessments for the most recent financial year
- ☐ last 12 months bank records
- ☐ 3 most recent payslips if a party is engaged in paid employment
- ☐ if a party owns or controls a business, Business Activity Statements for last 12 months are required
- ☐ any other documents relevant to determining the income, assets, expenses, and liabilities of the party.

## When are you exempt from pre-action procedures?

Pre-action procedures do not apply to applications for child support or cases involving bankruptcy. The court may also consider the procedures inappropriate if:

- the case is urgent
- it involves allegations of family violence
- it involves allegations of fraud
- there is a genuine intractable dispute in that one party refuses to negotiate
- a party would be unduly prejudiced or adversely affected if another person became aware of their intention to formalise property settlement
- a time limit is close to expiring
- there is a genuine dispute about jurisdiction under the Family Law Act.

The requirement for full and frank disclosure still applies.

## In property cases 'full and frank disclosure' includes:

- ☐ Three (3) most recent tax returns and tax assessments
- ☐ Comprehensive documents outlining any superannuation interest or entitlement
- ☐ Financial statements related to any trust where a party holds the position of trustee or beneficiary
- ☐ Financial statements linked to any company where a party serves as a director or shareholder
- ☐ In cases where a party owns or oversees a business, providing Business Activity Statements for the last 12 months is necessary
- ☐ For any company involved, disclosure of information about its most recent annual reports is vital.
- ☐ Market value or appraisals of any property
- ☐ Information on any liabilities
- ☐ Information on disposal of any property

Families differ significantly in their structure, roles, and dynamics, which reflects in various facets like the return on investment, directors, shareholders, or company's constitution in partnerships. Relying solely on market value or appraisals might not suit every family's needs when dealing with property matters.

- ☐ It's essential to gather comprehensive information about any liabilities involved.
- ☐ Similarly, it's crucial to have detailed information regarding the disposal of any property.

## Going to court: applying for a property order

If you have followed the pre-action procedures and still cannot resolve your property issues and need a court to decide, you must apply to the [Federal Circuit and Family Court of Australia \(FCFCOA\) for orders](#).

For married couples, you can apply for property settlement at any time after you have separated, but **once your divorce has been finalised, you only have up to 12 months to apply**. For **de facto couples**, you must apply for a property order **within two years of separating** from your partner; otherwise, you will need to ask the court for special permission to apply outside of that time. Unless you have good reasons for not being able to apply for orders within the time period, the court may not let you apply.

You can apply to the court for property orders relating to:

- property — how property, income, financial resources, and debts should be shared between partners
- maintenance to provide ongoing financial support for a spouse or de facto partner.

## Court process in property cases

The court follows a four-step process when determining how property will be divided.

**1. Identify and value all property of the parties:** Property value is determined when the matter goes to court; not at separation. If there is no agreement about property value, an independent assessor may have to provide a sworn valuation.

**2. Identify contributions towards property:** The court considers the direct financial contributions and indirect non-financial contributions that both parties made towards the property during the relationship or marriage. Direct financial contributions include wages or earnings, savings, gifts or inheritances, or property either party brought into the relationship or marriage; indirect non-financial contributions to the property include home improvements and household contributions, such as caring for children, cooking and cleaning. Both types of contributions are considered equally valuable.

**3. Consider specific factors set out in the Family Law Act 1975 (Cth):** The court looks at other factors including each individual party's future earning capacity, and the care and financial support of children.

**4. Consider justice and equity:** Finally, the court considers if the orders to be made are just and equitable to all parties. **Do not rely** on the court overturning anything you have previously agreed to, just because you now feel it is unfair.

## Court orders in property cases

In making **property orders**, the court can order:

- payment of money to another person by way of lump sum or instalment within a certain time
- transfer or settlement of property
- dividing up superannuation
- signing or producing documents so that orders can be carried out
- payment of maintenance.

When a property order is made, each person listed in the order must follow it. Otherwise, you can make an **enforcement application** for the court to enforce the order if the other party is not complying. However, please get legal advice before making an application. [For details, see page 26 'Enforcement orders'.](#)

You may receive an added share of the property if the court believes your income and financial resources are relatively low compared to your ex-partner or ex-spouse. Factors can include time taken out of the workforce to have children which has limited working capacity, resulting to income capacity being less than ex-spouse or ex-partner.

## Spousal and de facto maintenance

Under the Family Law Act 1975 (Cth), you may be able to make a claim for maintenance if you were married or in a de facto relationship. Your ex-partner or ex-spouse has a responsibility to financially assist you if you cannot meet your own reasonable expenses from your personal income or assets (or vice versa). When the need exists, both parties have an equal duty to support and maintain each other as far as they can, even after separation and divorce.

If you were married, you may have a right to spousal maintenance. If you were in a de facto relationship, you may only apply to the court for de facto maintenance if you and your ex-partner were ordinarily resident in a participating jurisdiction (under the Act this includes the State of Victoria) when the application is made. The relationship must fulfill requirements of a de facto relationship. [See page 2 'Am I entitled to property settlement?'](#)

In deciding **whether to make a maintenance order for you**, the court must consider whether your ex-partner or ex-spouse must maintain you, only to the extent that they are reasonably able to, and only if you are unable to support yourself adequately. Reasons why you may not be able to adequately support yourself include:

- you care for a child (under 18 years) of the relationship or marriage
- due to age or a physical or mental incapacity you cannot gain appropriate employment
- any other adequate reason.

The court then takes into account different factors such as:

- age and health of the parties
- income, property and financial resources of each party, and whether they are physically or mentally well enough for appropriate employment
- whether either party has care or control for a child (under 18 years) of the relationship or marriage
- commitments of both parties to support themselves, any children or any other person
- whether either party is eligible for a pension, an allowance or a benefit from the government or superannuation scheme
- standard of living
- how any maintenance would increase your earning capacity
- effect of any order on any creditors
- how much you have contributed to the income, earning capacity, property and financial resources of your ex-partner
- length of your relationship
- need to protect your role if you wish to continue as a parent
- terms of any other property orders made
- any child support provided or to be provided in the future
- terms of any financial agreement that is binding on a party.

If a court determines that you are eligible for a **maintenance order**, then the court can make an order for payment of a lump sum (either in one amount or by instalments) or by transfer or settlement of property. As many women receive a lump sum payment as part of their property settlement, make sure this does not affect your right to a pension or benefit by first checking with a financial counsellor.

A maintenance order will end if either partner or spouse dies, or you re-marry; unless in special circumstances the court otherwise orders it should continue.



## Enforcement orders

Courts do not automatically enforce family law orders. So if your ex-partner has not complied with property orders, your options include:

- attending a dispute resolution service,
- getting legal advice or
- applying to the court for an enforcement order.

Where your ex-partner is not complying with their obligations under property orders, you can make an enforcement application for an enforcement order that requires them to comply with their obligations. However, as the process can be complex, you should first get legal advice before applying to the court for an enforcement order.

For details, read ‘Complying with financial orders’ under ‘Property & Finance’ on the [FCFCOA website at, www.fcfcga.gov.au/fl/fp/compliance-enforcement](http://www.fcfcga.gov.au/fl/fp/compliance-enforcement)

In an enforcement order the court can:

- identify the total amount owing under an obligation to pay
- order that the total amount owing be paid in full or by instalments
- order enforcement of the obligation
- prevent the disposal of property or wasting of assets
- stay the enforcement of an obligation (including an enforcement order)
- make orders for costs.

In certain circumstances, the court can impose a penalty. For details, see ‘Enforcement Hearings (Prescribed brochure)’ under ‘Resources | Publications on the [FCFCOA website at, https://www.fcfcga.gov.au/](https://www.fcfcga.gov.au/)

## Attending court

Going to court can be stressful and difficult. You can get a **support person to accompany** you on your days **in court**, or explain to you how the court system works in person or over the phone, by calling **Court Network 1800 681 614**.

Understanding how the court system works can better prepare you for court appointment and hearings. Read Victoria Law Foundation's publication Victoria's legal system: An introduction to the legal system in [Victoria available at, www.victorialawfoundation.org.au](http://www.victorialawfoundation.org.au).

**Worried about your safety** while attending court? **Call the FCFCOA on 1300 352 000 before your hearing** or make an appointment so that safety arrangements can be discussed and put into place. By law, you must inform the court if there is an existing or pending family violence intervention order (FVIO) involving you or your children. You should also ring **Safe Steps Family Violence Response Centre 1800 015 188** or speak to your family violence worker on how you can stay as safe as possible.

**Childcare arrangements:** when going to court, make separate childcare arrangements for your children on that day. Generally, children cannot go into the courtroom. If you cannot arrange separate childcare arrangements and have to bring your children with you, arrange for a friend or family member to attend with you so that they can look after them while you are in court or meeting with a lawyer.

**Interpreter service:** Should you need an interpreter to assist you at court, inform the court staff **at least two weeks before your court** appointment or hearing. They will organise to have a professional and independent interpreter available for you at no charge. To access Translating and Interpreting Service (TIS) outside of court, **call 131 450**.

## Different types of courts and what they do

- **Supreme Court** hears among the most serious criminal, and complex civil cases in the state, as well as some appeals from Victorian courts and tribunals. The Supreme Court is the highest court in Victoria
- **County Court**, Victoria's principal trial court hears and determines criminal, common law and commercial matters
- **Magistrates' Court** is the first level of the Victorian court system that hears most matters that reach court. It has no jury and each matter is heard and determined by a judicial officer. Matters include, personal safety intervention orders (PSIO or IVO's), family violence intervention orders (FVIO), family law, civil disputes, and driving/traffic offences
- **Victorian Civil and Administrative Tribunal (VCAT)**, making decisions about a wide range of cases or by helping people to resolve disputes such as, residential tenancy, power of attorney, and equal opportunity
- **Children's Court** is a specialist court that hears cases involving the care and protection, and criminal offending of children and young people
- **Coroners Court** independently investigate deaths and fires, reduce preventable deaths, and promote public health and safety and the administration of justice
- **Victims of Crime Assistance Tribunal (VOCAT)** provide financial assistance to victims of violent crime committed in Victoria. VOCAT assists victims to recover from a crime by providing financial assistance for expenses incurred, or reasonably likely to be incurred, as a direct result of the crime

- **Federal Circuit and Family Court of Australia** addresses matters to do with family law (including divorce, separation, children, and property), migration law, and general federal law jurisdiction addressing administrative law, admiralty law, bankruptcy, consumer law (formerly trade practices), human rights, industrial, intellectual property and privacy. The Court shares this jurisdiction with the Federal Court and in some cases state courts.

### Checklist: important documents for legal appointment

- ☐ passport
- ☐ birth certificate
- ☐ citizenship papers
- ☐ marriage certificate
- ☐ driver's licence
- ☐ medicare card
- ☐ bank books/statements, ATM receipts and credit cards
- ☐ last tax return and notice of assessment
- ☐ titles of ownership and property deeds
- ☐ partnership and company records
- ☐ details of joint and personal debts
- ☐ guarantees
- ☐ wills
- ☐ car registration and engine number (VIN)
- ☐ mortgage and property details, e.g. council rates
- ☐ rental agreement
- ☐ Centrelink reference number
- ☐ insurance policies, e.g. home, contents, car and life
- ☐ superannuation details
- ☐ contact details for your accountant and lawyer

# Getting Legal Advice

Get as much information as soon as possible about your legal rights and entitlements, even if you believe your partner will take the separation well and do the right thing by you. Getting legal advice means you are ensuring that you are properly informed about your rights and entitlements.

Laws around separation are complex and, for most of us, quite confusing, so if you are considering separation or have separated, you should seek legal advice. A lawyer can help you understand your legal rights and responsibilities and explain how the law applies to your situation. A lawyer can also explain and help you reach an agreement with your former partner without going to court.

You may be able to get legal advice from:

- Victoria Legal Aid
- community legal centres such as, Women's Legal Service. However, these organisations have strict eligibility criteria's for certain services that they provide; you can find further information at [VLA eligibility criteria](#) and [Community legal centres information](#). Despite the eligibility criteria's, these organisations can provide legal advice and information accessible to everyone via their website and other means.
- Private law firms

Court staff can help you with questions about court forms and processes but cannot give you legal advice. Going to court can become expensive with court fees and lawyer's charges, and there is no guarantee on the outcome.

If you can, try and resolve your issues out of court with legal assistance.

Before seeking legal advice, make sure you have everything you need to avoid unnecessary delays and expense:

- list all your sole and joint property, debts, income and contributions
- gather copies/originals of important documents.

### **Victoria Legal Aid**

Victoria Legal Aid (VLA) can help you with legal issues including family breakdown, child protection and family violence, tenancy, and debt. VLA runs a Legal Help phoneline and free clinics on specific issues. You can get information on family law matters from the Legal Help phoneline, regardless of your eligibility for legal aid or even if your ex-partner is receiving services from VLA.

VLA can also fund your legal representation by a private lawyer or a VLA staff lawyer, provided you meet its eligibility criteria. For details, visit [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au) or call 1300 792 387 (Legal Help phoneline).

### **Community Legal Centres**

Community Legal Centres (CLCs) are located across Victoria and provide free legal services to the public — particularly if you are facing economic and social disadvantage, are ineligible for legal aid and cannot afford a private lawyer.

Some centres are generalist and can assist you with a wide range of legal issues including family law, credit and debt and family violence. Others specialise in certain legal areas and may not deal with property issues or may only assist specific groups of people such as women, young people or people with disabilities. Each CLC has different eligibility guidelines as to who they can help, what legal issues they can help with and how much help they can provide. To find a community legal centre near you, visit [www.fclc.org.au/find\\_a\\_community\\_legal\\_centre](http://www.fclc.org.au/find_a_community_legal_centre) or call (03) 9652 1501.

### **Private lawyers — how to choose one**

Private lawyers provide legal advice and representation for a fee. Engage a lawyer that you feel comfortable with and that you can afford. If you have experienced family violence or financial abuse, it is important to choose a family lawyer who understands and has experience dealing with these issues.

Shopping around will allow you to speak to different lawyers and compare their services and fees. Whenever you are unclear about any advice given by a lawyer, make sure you ask to have it explained in a way that you can understand. The Law Institute of Victoria website offers guidelines on choosing your lawyer and preparing for your first appointment. Visit [www.liv.asn.au](http://www.liv.asn.au) or call Legal Referral Service (03) 9607 9550.

## Legal fees

A lawyer's charges are made up of fees for professional services and disbursements — expenses paid for you by the lawyer, such as court fees for filing documents or paying barrister fees. When you first meet with a lawyer, ask what their fees are to avoid surprises.

In Victoria, **lawyers must provide you with a 'costs disclosure statement' if costs are likely to exceed \$750.** This means giving you written information that explains how the estimated fees are calculated and your rights as a client. Even if the fees are under \$750 you have the right to request progress reports, reasonable information and a bill. **However, a fixed price is not guaranteed, and this is only an estimation which may change throughout the years.**

Lawyers' fees vary depending on the law firm and the legal work involved. **Some lawyers may offer a free 30-minute initial consultation.**

Payment structures can also vary with different lawyers. Lawyers must use a costs agreement if your fees exceed a certain amount — a contract with you that sets out the fees you will be charged. If your lawyer does not provide you with a costs agreement you have the right to request one.

WIRE has a list of private lawyers in Melbourne CBD that provide up to an hour of free consultation. You can call WIRE 1300 134 130 to be referred to one.



# Where to go for help

## Courts

- **Commonwealth Courts Portal** [www.comcourts.gov.au](http://www.comcourts.gov.au)
- **Court Network** 1800 571 239 [www.courtnetwork.com.au](http://www.courtnetwork.com.au)
- **Federal Circuit and Family Court of Australia** 1300 352 000 [www.fcfcoa.gov.au](http://www.fcfcoa.gov.au)
- **Online Application for Consent Orders Kit (FCFCOA)**  
[www.fcfcoa.gov.au/fl/forms/app-consent-form-only](http://www.fcfcoa.gov.au/fl/forms/app-consent-form-only)
- **Online Application for Divorce Kit (FCFCOA)**  
[www.fcfcoa.gov.au/fl/hdi/apply-for-divorce](http://www.fcfcoa.gov.au/fl/hdi/apply-for-divorce)
- **Victorian Civil and Administrative Tribunal (VCAT)** 1300 018 228, (03) 9628 9856 (family violence) [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)

## Family violence services

- **1800RESPECT** 1800 737 732 [www.1800respect.org.au](http://www.1800respect.org.au)
- **Orange Door** [www.orangedoor.vic.gov.au](http://www.orangedoor.vic.gov.au)
- **Safe Steps Family Violence Response Centre of Victoria**  
1800 015 188 [www.safesteps.org.au](http://www.safesteps.org.au)
- **Djirra** (Aboriginal Family Violence Prevention) 1800 105 303  
[www.djirra.org.au](http://www.djirra.org.au)

## Government agencies

- **Department of Human Services (Centrelink) — Parenting payments** | 136 150 | Report income 133 276 (131 202 multilingual)  
[www.humanservices.gov.au/customer/dhs/centrelink](http://www.humanservices.gov.au/customer/dhs/centrelink)
- **Newstart Allowance** 132 850  
[www.humanservices.gov.au/customer/dhs/centrelink](http://www.humanservices.gov.au/customer/dhs/centrelink)
- **Department of Human Services (Child Support) — Applying for child support and changes to circumstances** 131 272  
[www.humanservices.gov.au/customer/dhs/child-support](http://www.humanservices.gov.au/customer/dhs/child-support)

- **Translating and Interpreting Service (TIS National)** 131 450  
[www.tisnational.gov.au](http://www.tisnational.gov.au)
- **Medicare** 132 011  
[www.humanservices.gov.au/customer/subjects/medicare-services](http://www.humanservices.gov.au/customer/subjects/medicare-services)
- **Guides to Social Policy Law: Child Support Guide**  
[www.guides.dss.gov.au/child-support-guide](http://www.guides.dss.gov.au/child-support-guide)
- **Separated parents** [www.servicesaustralia.gov.au/separated-parents](http://www.servicesaustralia.gov.au/separated-parents)

### Legal advice and mediation

- **Djirra** (Aboriginal Family Violence Prevention & Legal Service in Victoria) 1800 105 303 [www.djirra.org.au](http://www.djirra.org.au)
- **Australian Institute of Family Law Arbitrators and Mediators (AIFLAM)** 1300 511 916 [www.aiflam.org.au](http://www.aiflam.org.au)
- **Federation of Community Legal Centres Victoria** (03) 9652 1500 [www.communitylaw.org.au](http://www.communitylaw.org.au)
- **Law Institute of Victoria** (03) 9607 9311 [www.liv.asn.au](http://www.liv.asn.au)
- **Law Term Finder** [lawtermfinder.mq.edu.au](http://lawtermfinder.mq.edu.au)
- **Tenants Victoria** (03) 9416 2577 [www.tenantsvic.org.au](http://www.tenantsvic.org.au)
- **The Law Handbook (Fitzroy Legal Service)** [www.flis.org.au](http://www.flis.org.au)
- **Victoria Law Foundation** [www.victorialawfoundation.org.au](http://www.victorialawfoundation.org.au)
- **Victorian Legal Aid Legal Help phonenumber** 1300 792 387
- **Victorian Legal Aid (Separation, divorce, annulment)**  
[www.legalaid.gov.au](http://www.legalaid.gov.au) | Find legal answers | Separation, divorce, marriage annulment
- **Women's Legal Service Victoria** (03) 8622 0600 (Melbourne), 1800 133 302 (regional) [www.womenslegal.org.au](http://www.womenslegal.org.au)
- **International Social Services** 1300 657 843 [www.iss.org.au](http://www.iss.org.au)

## Relationship services

- **Family Relationship Centres Advice Line** 1800 050 321  
[www.familyrelationships.gov.au](http://www.familyrelationships.gov.au)
- **Relationships Victoria** 1300 364 277  
[www.relationshipsvictoria.com.au](http://www.relationshipsvictoria.com.au)

## Specialist support services

- **Council of Single Mothers and Their Children Support Line**  
(03) 9654 0622 (Melbourne metro) or 1300 552 511 (regional)  
[www.csmc.org.au](http://www.csmc.org.au)
- **Switchboard Victoria LGBTIQ+ counselling, referral, information service** 1800 184 527 [www.switchboard.org.au](http://www.switchboard.org.au)

**Contact WIRE 1300 134 130**

**For an up-to-date contact list of support services available**



Call us:

# 1300 134 130

Monday and Thursday 9am-7pm

Friday 9am-5pm or book a call or zoom support

at, <https://www.wire.org.au/find-support/>



Visit us:

**Level 1, 673 Bourke Street,**  
Melbourne 3000

Weekdays 9.30am to 4.30pm



Contact us:

[support@wire.org.au](mailto:support@wire.org.au)

**Chat online, download resources  
and book into events:**



[wire.org.au](https://www.wire.org.au)

(Chat weekdays only)



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We acknowledge the First Nations people  
as the traditional custodians of the lands  
and waters throughout Australia.

WIRE is a service for women,  
non-binary and gender-diverse people.

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