

# What we do



**ANDERSONS**  
S O L I C I T O R S

## Introduction

When any relationship breaks down, the effect on those involved can be quite shattering. There is a whole range of consequences that follow the breakdown of a relationship and the emotional toll on those involved can be significant.

The consequences range from emotional to financial and legal and include changes to peoples' day-to-day lives. It is important to know that there is a range of matters that need to be addressed following any separation and that at Andersons our Family Law team is here to help you.

Family law covers a wide range of areas:

- ◆ Property settlement
- ◆ Children's issues
- ◆ Divorce
- ◆ Child Support
- ◆ Estate planning
- ◆ Family violence and intervention orders
- ◆ Same sex relationships

At Andersons we have a specialised and dedicated team of solicitors and support staff with considerable experience and expertise in handling family law matters. Our team appreciate and understand the pain and hurt feelings and the fear that can exist at times like this. We provide clear and down to earth advice about what options exist and can help you through each of the matters that need to be attended to following separation.

At Andersons, our solicitors know that sometimes a sympathetic and non-judgmental ear, and one that has experience in this area of the law, can help to bring clarity and even a sense of composure so that the situation becomes one that can be both survived and managed, to achieve the most positive outcome.

## Property Settlement

Following the breakdown of any marriage or de facto relationship, the issue of property settlement should be looked at as soon as possible.

It is likely that an adjustment of the property interests of the parties will be required following separation to allow the property of the relationship to be divided and to achieve a distribution of assets that is just and equitable. There is a range of matters that are taken into account when assessing a party's entitlements to property and it is important that you obtain advice from someone with experience in family law.

There is a number of misconceptions in the community about property settlements including:

- ◆ You do not need to do a property settlement unless you own a house;
- ◆ I owned the house before the relationship and therefore it is mine free from any claim from the other party;
- ◆ I built up the business myself and therefore it is mine free from any claim from the other party;

- ◆ I will lose my rights to claim against the home if I leave the home or if I leave the relationship;
- ◆ I get to keep my inheritances and gifts free from any claim of the other party;
- ◆ Being a stay at home parent is not valued in the eyes of the law;
- ◆ The Court will only consider property owned by the parties at separation.

It is essential that any agreement reached in respect of property settlement is formalised through the correct legal avenues. There are only two ways to do this:

1. Binding Financial Agreement; or
2. Consent Order through the Family Court.

Any agreement that is not formalised by one of these two processes is what is known as an 'informal agreement' and will not be binding on the parties. This means that the other party can change their mind in the future. An informal agreement is not recognised by the Courts.

Our team can advise you about the differences between the two methods of finalising an agreement and assist you to reach and formalise your agreement in a way that best suits you and your specific circumstances.

## Consent Order

Usually our preferred way to formalise a property settlement agreement is to obtain a Consent Order through the Family Court of Australia. Neither you nor your solicitor needs to actually appear in Court in order to

obtain a Consent Order.

Your solicitor will complete the necessary documentation to apply to the Court for a Consent Order and draft the terms of the orders carefully so that they properly carry out the agreement you have reached with your former partner and protect your interests. The documentation is then filed in the Family Court of Australia where it is reviewed by a Registrar of the Court and made as a final Court order for property settlement.

## Binding Financial Agreement

There are three types of Binding Financial Agreements:

1. One that is entered into before you enter into a marriage (commonly referred to as a 'prenuptial agreement'), or de facto relationship;
2. One prepared during the marriage or de facto relationship; and
3. One prepared after divorce or the breakdown of the de facto relationship.

Binding Financial Agreements can be used to formalise your property settlement agreement. Our team will advise you as to whether we consider this the appropriate course of action in your case.

Another common use for a Binding Financial Agreement is to enter into one prior to entering into a marriage or de facto relationship. These agreements are designed to protect your assets from an adverse claim from your partner. The Binding Financial Agreement will set out how your assets will

be divided in the event there is a separation. Advising on, and preparing Binding Financial Agreements is a particularly complex area of the law and one that is constantly changing. You need to obtain expert family law advice in respect of this area. We would advise you whether this type of agreement is appropriate for your specific circumstances and if so, help you by carefully drafting the Binding Financial Agreement.

### **Living Arrangements for Children**

Separation is a difficult time for all involved, especially children who are often caught between parents in dispute. At law there is a presumption of shared parental responsibility and in Australia the old terms 'custody' and 'access' have been replaced by the new terms 'lives with', 'spends time with' and 'communicates with'.

In these cases we can provide advice about your legal rights and responsibilities in respect of your children and how the law would determine the living arrangements of your children. With our significant experience we are able to provide advice in respect to different proposals for the living arrangements of your children. We are able to help you come up with proposals that cover the children's time both during the week, on the weekends, during holidays and on special occasions.

Our team has networks which include a wide range of appropriate private and community based services available to assist you and your family following separation. These include parenting programs, counselling services and mediation services.

Parents are encouraged to make suitable arrangements for their children without having to go to Court and whenever possible to have a cooperative and shared approach to parenting following separation.

There are certain requirements parties must fulfil if they are unable to resolve the dispute about the children before going to Court. This includes Family Dispute Resolution, which is a specialised mediation to assist in resolving issues to do with the living arrangements of the children following separation. We are able to advise you about your position prior to attending Family Dispute Resolution. We will assist you with formulating a detailed proposal so that you are adequately equipped to attend at the Family Dispute Resolution to achieve the best possible outcome.

### **Formalising Arrangements in Relation to Children**

There are two ways to formalise an agreement about the arrangements in relation to children:

1. A Parenting Plan; or
2. a Consent Order.

There are significant differences between the two.

Parenting Plans are not binding and do not have the same force and effect of a Court Order. The Court Order is binding, is far less flexible and has consequences for breaching it.

Each person's situation is different and our team can advise you as to the appropriate course of action in your case. In either event,

we can draft the Parenting Plan or apply to the Family Court of Australia to have your agreement formalised by way of a Consent Order. We can assist you in achieving the best outcome for your children and for you.

### **Child Support**

Following separation one parent will usually have to pay child support to the other party. Child support is overseen by the Department of Human Services. The amount that is required to be paid from one parent to the other depends on a number of factors, but primarily on the level of care (measured in nights) that each parent is providing to the children and the income of each of those parents. There is a range of formulas that apply in various situations which then calculate the amount payable from one parent to the other.

Parents can agree to vary a Child Support Assessment and this variation can be formalised with either a Limited or Binding Child Support Agreement. This may be of particular importance where there are private school fees involved as the Child Support Assessment will not take into account the costs of private schooling.

In other situations it may be necessary to apply for a departure from the administrative assessment. This can be either that the payer is applying for a Departure Order so that the child support amount is less than the assessment or that the payee is applying for a Departure Order seeking an increase in the child support amount.

Child Support Agreements and Departure Orders are complex areas of the law and you will need qualified legal advice in relation to them.

### **Divorce**

Andersons can assist you with all the legal requirements of your divorce. We can provide advice about time limits that apply in respect of applications for divorce as well as property and spousal maintenance applications following divorce.

We will assist in all aspects of the process for applying for divorce by completing the application, attending in Court where necessary and attending to service of the application on your spouse.

There are certain matters which can make applications for divorce more complicated and in which our team has significant experience:

- ◆ Overseas marriages;
- ◆ Your spouse is missing or overseas;
- ◆ You are separated but living under the same roof;
- ◆ You have been served with an application for divorce and disagree with the contents;
- ◆ There are children under the age of 18.

### **Consideration about your Will**

In the event of a separation from your spouse or partner, you should, as soon as possible, make an appointment to update your existing Will, Power of Attorney and Power of Guardianship or, if you do not have those already, to have them prepared on your behalf.

Your family lawyer will refer you to one of our Wills and Estate Planning team for specialist advice in this area of the law.

### **Intervention Order**

Intervention Orders are mainly associated with family violence but they are becoming

increasingly common following the breakdown of a relationship. Intervention Orders are usually applied for by the South Australian Police and granted by the Magistrates Court.

It is possible to apply for an Intervention Order privately; that is where the Police have elected not to apply for an Order. You can also instruct a solicitor to apply for the Intervention Order on your behalf. If you are having difficulties obtaining an Intervention Order or if you believe that you have been served with an Intervention Order unjustly you should speak to one of our Family Law team members.

There are also injunctions that can be obtained through the Federal Circuit Court which prevent a party from assaulting, intimidating or harassing the other party or, for example, attending at their property. These are very similar to an Intervention Order.

### **Same Sex Relationships**

Amendments to the Family Law Act 1975 mean that, for those who meet the criteria of a de facto relationship, the law of de facto relationship maintenance and property adjustment now applies to same sex relationships. Therefore, all of the property and maintenance issues that apply to

heterosexual de facto couples also apply to same sex de facto couples.

You may also be considering having a family and want to know where you and your partner stand in relation to any children you may have. This remains a complex area of the law and one that you should obtain specialist advice on from the outset.



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