



Family Law – Some Essential Facts

- Our parenting, property and maintenance laws apply equally to de facto relationships, as they do to married couples generally throughout Australia.
- If you are in a de facto relationship, then in order to be able to file for relief in the Court, you must have been together in a de facto relationship for at least two years, or alternatively, there must be a child born of the relationship, and you must be able to show substantial contributions to that child.
- Once you separate from a de facto relationship, you only have **2 years** after that date to file proceedings for property and maintenance.
- If you are married, then you only have **12 months** after you obtain a divorce to file proceedings in Court for property and maintenance.
- A divorce cannot be applied for until the parties have separated, with the marriage being broken down irretrievably and you have lived separately for at least 12 months prior to the Application being made. Only one person needs to form the intention that the marriage has broken down irretrievably and communicate that to the other party or act upon that intention.
- Divorce is a straight forward exercise and it allows the parties to remarry, but you can seek relief in relation to child support, spousal maintenance, property settlement and parenting orders immediately after separation – you do not have to wait until you are divorced.
- In relation to parenting matters, you can finalise agreements by way of a parenting plan or a parenting order.
- In relation to property matters you can finalise financial arrangements after separation by way of a Binding Financial Agreement or by way of a Consent Order.
- We have a discretionary based system in relation to property and children's matters and it is always best to seek specific advice from a family law specialist about your rights, entitlements and obligations after separation.
- Pre-Nuptial Agreements (referred to as Binding Financial Agreements in Australia) can be entered into prior to entering into a relationship, during a relationship or even at the end of the relationship.
- If a Pre-Nuptial Agreement is entered into prior to or during a relationship, the agreement does not come into force and effect in relation to property settlement issues and spousal maintenance, until the parties separate. ,

- Upon separation you should seek advice from a lawyer about the terms of your Will (if you have a Will), or consider executing a Will and you should also check insurance policies, binding death nominations of the superannuation benefits and any Power of Attorneys that you have executed during the relationship and seek legal advice about these issues.
- There are stamp duty and Capital Gains Tax available if property settlement transactions comply with the legislation and are done pursuant to Binding Financial Agreement and you should seek legal advice about these matters.
- There is not line in the sand drawn at separation in relation to property settlement – it is current day assets and their values that are identified by the Court.
- It is often better to resolve financial issues, sooner after separation than later, due to the fact the Law always looks at current assets and not just what existed a separation.
- There is no law presumptions or rules that exclude inheritances or gifts and we have a discretionary basis that that is substantially based upon contributions.