

Recently Separated – Where to Now?

Have you separated and have no idea what to do next?

A good place to start is to think about what action you can take to protect your interests. This includes taking action to protect bank accounts, important documents, sentimental items and social media accounts.

From there, a sound next step is to use the network of Family Relationship Centresⁱ. They can provide a wealth of information about relationships and separation and also offer mediation services. If family violence is an issue, they can also provide links to specialist support services. Family Court and Federal Circuit Court websites also have a number of guides that can be helpful as an initial source of informationⁱⁱ.

If you have children, they will be upset and uncertain about the future. Remember to keep their best interests in mind and that high levels of conflict between separating parties is harmful to children.

We encourage people to sort through their issues amicably and reach a fair agreement if they can. This is generally the best way to proceed (if possible) saving time, money and stress. If you can reach agreement, the terms of your agreement can be set out in consent orders, a binding financial agreement or even a parenting plan. All of these methods have differing benefits and potential pitfalls; but generally, one of the methods will suit most people.

If you can't agree, then you may need to seek help from a dispute resolution practitioner (such as a mediator) or a lawyer who may be able to help identify the issues between the parties, explore opportunities for sensible compromise and (hopefully!) resolve your matter by one of the methods mentioned above.

Where there are serious differences between the parties or if one party refuses to discuss or negotiate a settlement, you may need to turn to the Family Court. We suggest you get information and advice about your options and procedural matters if this applies to you. Information can be obtained from a Family Relationship Centre whilst advice can be obtained from a lawyer, Legal Aid or Community Legal Centre.

If you are married and have been separated for at least 12 months and one day, you may apply for a divorce. A divorce application can be either joint (again, requires the cooperation of your former partner) or sole (no cooperation needed, but some extra procedural steps – see below).

Whether your divorce application is joint or sole, there is (at the time of writing) a \$900 filing fee charged by the Family Court of Western Australia

(for those in WA) and Federal Circuit Court (for those outside WA). This can be reduced to \$300 in certain circumstances if the applicant (for sole applications) or both applicants (for joint applications) meet the criteria.

For a joint application both parties sign and are aware of the application so there is no need for the application to be "served".

For a sole application, there is the requirement that the application be served on the other party (and proof of service is required for the application to proceed).

Once the application has been filed, the matter is allocated a hearing date, although depending on your specific circumstances, you may not need to attend the hearing. However, if you make a sole application and have children under 18 you (or your lawyer) will be required to attend (this is to satisfy the court that proper arrangements are in place for any children under 18).

An important point to remember about divorce is that, whilst you can finalise a property settlement, parenting issues or a divorce in any order (and independently of each other), there is a **12 month time limit** (from the date of your divorce being finalised) on commencing court proceedings for a property settlement or spousal maintenance if you haven't already done so.

Accordingly, we strongly recommend parties keep this time limit in mind when filing for divorce prior to finalising a property settlement.

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ⁱ <https://www.familyrelationships.gov.au/talk-someone/centres>

ⁱⁱ <https://www.familycourt.wa.gov.au>, <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/home/>, <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/home>