

SIX STEPS

TO A SUCCESSFUL
SEPARATION OR DIVORCE



Preston
LAW

CONTENTS

Introduction: an overview of what is in this guide.

Page 2

STEP ONE

Counselling: first steps you should take either before separation or before taking any court action.

Page 4

STEP TWO

Separation: first steps you should take when separation is inevitable.

Page 6

STEP THREE

Mediation: the process that may assist you to an early resolution of your property or parenting matter.

Page 8

STEP FOUR

How to help your children cope: how to keep the kids healthy and happy before during and after separation and/or the divorce.

Page 10

STEP FIVE

Assets and equitable distribution: key points about what both parties should be doing in preparation for settlement.

Page 12

STEP SIX

Finding happiness after separation and the divorce.

Page 14

Info about our Family Law experts.

Page 15

Introduction:

an overview of what is in this guide



If you're taking the time to read this guide, you are either at the crossroads of a major decision in your life to separate from your spouse, or you've already begun taking steps to implement a separation. Throughout this guide you will find useful information & resources to lead you through this sometimes difficult, stressful and emotional process.

We understand that separating from your spouse is not a decision to be taken lightly, the first chapter of this guide is focussed on attempting to reconnect with your partner through counselling with the ultimate aim of re-establishing or improving your relationship with your spouse. However, not every marriage can be restored by counselling and this is when

separation becomes the most appropriate course of action. During this time you will require some more concrete steps. Steps 2 to 6 of this guide include information and guidance on mediation, parenting matters, property settlement and moving on with your life.

Our objective is to make sure you are armed with the best possible information to assist you in reaching a timely and cost effective resolution for your separation - without going to court. If there are children involved in the separation, our mission is to provide you with maximum support and strategies to lessen the stress and achieve the best possible outcomes.

If you've already heard enough and want to speak to a lawyer we are available to answer any of your queries, no matter how big or small, simply call **4052 0700** for an obligation free consultation.



1 Counselling:

first steps you should take either before separation or before taking any court action



It is fair to say that relationships are full of ups and downs. From misunderstandings, to disagreements and even full blown arguments it can start to feel like it is all too much hard work. Talking about these issues or coming to some kind of mutual compromise, with the help of a professional counsellor can often help repair your relationship before it breaks down completely.



Before starting a somewhat stressful, expensive and decisive divorce or separation process we highly recommend to all of our clients that they consider contacting a recognised counselling service to try and resolve their issues and difference without the need for separation. Relationship counselling sessions can often help couples overcome

issues and resolve their differences amicably to start to repair their relationship. This step should be taken before filing any court proceedings as it has the potential to save you from incurring considerable legal costs, anxiety, and the possible division of your life savings and assets.

In particular circumstances, such as family & domestic violence, we don't recommend counselling. If you are suffering from domestic violence call the Queensland domestic violence hotline on **1800 811 811**. For discreet assistance with beginning the separation process please contact our office confidentially on **4052 0700**.

Relationship counselling services in and around Cairns:

Relationships Australia - www.relationships.org.au P: 1300 364 277;

Centacare Cairns - www.centacarecairns.org P: (07) 4044 0130; or

One of the many private Mediation services that are usually run by experienced psychologists.

2 Separation:

first steps you should take when separation is inevitable

In the event that you can't rebuild your relationship through counselling and you've made the mutual decision with your partner to separate, we recommend that you take certain steps, as soon as possible, in order to protect your interests.



1. Speak to a lawyer about your circumstances. This includes discussing parenting issues, property issues, divorce, child support, spousal maintenance, and updating your will. It's important that you have trust and belief in your lawyer's ability to get you the best possible result. If you're currently looking for a lawyer, or believe that your present lawyer doesn't have your best interest at heart, give our team a call for an obligation free appointment and discussion about your circumstances on **4052 0700**.
2. Talk to your bank about cancelling any redraw facility on your accounts to ensure that your asset pool is not compromised. You may also want to talk to them about establishing a new account in your own name for future funds.
3. Strongly consider changing the passwords for any internet accounts you use, this includes email, social media and any non-joint bank accounts.

4. Compile a list of all of your separate or joint assets, debts and superannuation interests.
5. Contact your superannuation fund to obtain a Binding Death Benefit nomination form if you wish to change your nominated beneficiary.
6. If you are vacating the property you and you partner shared, you should consider removing your name from any property utility accounts such as the gas, electricity or telephone bill.
7. Take note of all relevant information & dates, including the date of separation, as this information may be called upon in the future.
8. Make sure you have a copy of all of your relevant financial records. Particularly documents such as your latest superannuation statement, bank account statements and your tax returns from the last three years.
9. Ensure you seek quality legal advice before coming to any agreement about interim or temporary financial arrangements following separation. It is important to remember that decisions you make early on can affect your position later, or even influence the ultimate outcome of your property settlement. This includes decisions about how much financial support you pay (or receive) from your spouse, and who will be responsible for paying joint expenses.
10. If you or your spouse have a family business, a company, trust structures or other entities, it is important that you obtain expert legal advice about possibly complexities that may arise. Obtain this advice as soon as you can to ensure that you are protect your position as early as possible.



3 Mediation:

the process that may assist you to an early resolution of your property or parenting matter

Many matters can be resolved at Mediation. As engaging in Court proceedings will cost you a significant amount, we strongly recommend that all parties to a family law dispute considers attending Mediation prior to taking steps to commence court proceedings. This is unless there are particular circumstances, or urgency, that would make mediation inappropriate.

Once preliminary negotiations have commenced to resolve a property and/or parenting matter, there are certain steps that should be taken.



In a property matter...

the usual practice is for parties to exchange relevant financial documents in accordance with their disclosure duty and then to obtain valuations of any asset of which the value is disputed. After these steps have been completed, it is highly beneficial for the parties to then attend a Mediation. The Mediation may be organised with a qualified private mediator or a community-based Mediation service.

It is important to ensure that any agreement reached takes into account all assets and interests in property that either party has at that time. Ensure the agreement is practical, turn your mind to long-term outcomes, and possible taxation consequences. An expert family law lawyer will be able to “fact check” and “test” a financial settlement to ensure you have taken into account all possible consequences and outcomes.

In a parenting matter...

the Family Law Act stipulates that the parties must obtain a mediation certificate from a registered mediator before commencing any court proceedings in the Federal Circuit Court of Australia or the Family Court of Australia. The only exception to this ruling is where the parties qualify for an exemption from this Certificate due to factors such as urgency, family violence or child abuse.

In the initial stages of your Mediation you'll attend an intake interview and then the other party will be sent a letter inviting them to attend an intake interview prior to there being a joint mediation. A certificate will be issued verifying:

- > whether both parties attended the mediation and made a real effort;
- > whether the parties attended the mediation and one or both parties did not make a genuine effort to reach a resolution;
- > whether one party did not attend; or
- > whether it was not appropriate for the parties to attend a Mediation.

Mediation services in and around Cairns:

Relationships Australia - www.relationships.org.au Ph:1300 364 277



4 How to help your children cope:

how to keep the kids healthy and happy before during and after separation and/or the divorce



In determining what parenting arrangement is the most suitable plan for your children after you separate the best interests of the children should always be seen as the main consideration. This means that both parents should consider a range of factors before any agreement is reached, such as:

- > ensuring your children retain a meaningful relationship with both of you;
- > are kept safe from any family violence or abuse factors;
- > the distance your residences are from each other;
- > the relationships your child has with other people such as grandparents and siblings;
- > your employment hours;
- > any cultural factors;
- > the intellectual, emotional and psychological support your children need; and
- > any other relevant factors.

One of the main issues that Family Courts deal with is parents involving their children in adult issues, including their own relationship breakdown, financial issues, and parenting arrangements. While it is usual for the Courts to consider the views of older children, they shouldn't be made to take sides or asked questions about events that may have happened when they were with the other parent.



Tips for helping your child through your separation or divorce

- > Try to reach a mutual agreement with one another before telling your children what the agreement is. This removes the feelings of guilt about preferring one parent over the other the child could potentially have.
- > Make sure your children knows that they are loved and that you and your ex-spouse will work things out amicably.
- > Don't slander or criticise the other parent in front of your children. This way you avoid alienating them.
- > Consider children's counselling that might help them deal with your breakup and the new living arrangements. A school counsellor may be of assistance or you may choose to get your GP to refer a specialist children's counsellor. Alternatively, there are programs run for children of different ages by community organisations such as Relationships Australia or church groups.

5 Assets and equitable distribution:

key points about what both parties should be doing in preparation for settlement



1. Make a list of all your assets including whose name they are in and the estimated value. This will include:
 - a. your home
 - b. any investment property
 - c. any business interest (including websites, social media accounts, apps, trademarks etc)
 - d. any interests in a trust or other structure
 - e. all bank accounts
 - f. other accounts such as frequent flyer and game accounts
 - g. shares
 - h. vehicles, boats; and
 - i. other significant items such as jewellery, tools and collectables.

Be realistic with the estimated value of furniture and possessions as it is the second hand value, not the insurance value that must be used.

2. Also make a list of all of your liabilities including whose name the debt is in and the estimated balances for accounts such as mortgage loans, credit cards, personal loans and other debt such as vehicle loans or hire purchase loans.
3. Add details of each party's superannuation interests to your asset and liability list, including the name of the fund and approximate balance.
4. Collect all the most recent bank and super statements to show evidence of your joint assets, debt and super. Also obtain recent financial statements and other documents for business interests and trust assets.
5. Make a list of your financial and non financial contributions to the party's asset pool. This can include your annual income over the years of your relationship together with your tax returns to prove your income. It can also include details of inheritances or gifts from your parents, as well as details of renovations you have carried out to your home(s). If possible, find receipts and bank statements to support where the source of the renovation funds came from.
6. If you and your former spouse reach an amicable agreement about your property division, we recommend that you each obtain independent legal advice before filing any Consent Orders to ensure that the terms of settlement are fair to both of you. We don't recommend carrying out the terms of settlement without your agreement being finalised by a compliant financial agreement or consent orders that are ratified by the Court. Otherwise, you may find that the agreement you have reached verbally or put on a piece of paper is not binding and you may have to pay a lot more of your portion of the settlement funds to your former spouse if they commence court proceedings at a future date.
7. Lastly, we recommend that you consider any advice from your lawyer carefully and weigh up the potential costs you may face if you do not act reasonably and honestly or do not carefully consider any reasonable offer to settle. It is also often important to consider expert financial and taxation advice about the terms of any settlement and any possible implications. Your lawyer can assist with this process.



6 Finding happiness after separation and the divorce

Once you've finalised your property settlement and parenting matters, you will be in a more positive frame of mind and ready to move on with your life.

In order to protect your interests, ensure that any new relationship is based on mutual trust and commitment, and that you and your former partner can successfully co-parent into the future there are some steps we recommend you take sooner rather than later:

- 1 Providing at least 12 months has passed since the date of separation, you may wish to file an Application for Divorce. The Family Court website has user-friendly documents to help you to file this Application yourself. We are also happy to assist if required.
- 2 Ensure that you and your former partner communicate directly in respect to any parenting issues rather than through your children or either party's new partner. Whilst any new partner may wish to express a view about the raising of your children, involvement by them may cause conflict with your ex-partner. It may therefore be more beneficial for them to have minimal direct communication with your ex-partner.
- 3 We also recommend that you enter into a Binding Financial Agreement with any new partner. These Agreements can be made before cohabitation or marriage or during cohabitation or marriage and should detail each party's exclusive property, in the event of a future separation, and an agreement as to the distribution of joint property accumulated during the relationship or marriage.
- 4 You will also need to update your will, particularly after a Divorce Order is made to protect your estate for your children & relatives. If you re-partner, you may wish to consider protecting part of your estate for the children from your first relationship.
- 5 We also recommend that you consider making a new Binding Death Nomination in respect to your superannuation interests.

OUR FAMILY LAW EXPERTS

Preston Law Can Help

At Preston Law, we focus on the individual. We work closely with each of our clients to develop a relationship you can rely on. Our goal is to fully understand your family's circumstances and address your concerns. We want to support you while we guide you towards a positive outcome.

When you're working to protect your rights, you might not feel like you have money to spare on legal fees. We believe that every client deserves access to representation, which is why we offer several payment options that fit a variety of needs. Call to speak to us about our deferred payment options.

When you need compassionate representation and legal advice, contact Preston Law Firm on **+61 7 4052 0700**. Our family lawyers in Cairns are ready to discuss your case during your no-obligation first appointment.



Our team:

Rose Davies, Consultant

Louise Robert, Senior Associate

Rochelle Ryan, Associate

Sheree Ellwood, Associate



Rose Davies

A highly experienced and well-regarded family law expert, Rose has been recognised in Doyle's as a leading family and divorce lawyer in North Queensland. Rose has extensive experience in all aspects of family law and de facto relationship law, including drafting agreements and court documents, negotiating settlements, and implementing Court Orders. During her career she has successfully represented clients in Federal and State Courts, Appeal Courts and Hague Convention matters. Rose is a Solicitor of the Supreme Court of Queensland and High Court of Australia.



Louise Robert

Louise attained her Bachelor of Laws from James Cook University and was admitted to the Supreme Court of Queensland and High Court of Australia in 2013. With a focus on social justice, she gained experience in family law, regularly appearing in the Federal Circuit Court. She holds extensive experience within family law, domestic violence and child protection. Louise is a member of various legal associations including the Queensland Law Society, Far North Queensland Law Association, and Family Law Practitioner's Association. She also serves as the Far North Queensland Youth Assistance Fund Secretary.



Rochelle Ryan

Rochelle has experience in all aspects of family law including complex property, children's and domestic violence matters. In addition to her law degree, Rochelle has a Bachelor of Business with a major in accounting. She has previously worked in one of the Big Four accounting firms.

Rochelle's focus on resolving disputes outside of court means that she has significant experience in both negotiation and mediation. Rochelle is also a trained collaborative law professional.



Sheree Ellwood

Sheree has experience in a broad range of legal matters, but her real interest is in family law. Whilst she prefers a mediated approach to family law and favours litigation-free outcomes over costly Court battles wherever possible, Sheree also represents clients in both the Federal Circuit Court of Australia and the Family Court of Australia.

Working closely with her clients' accountants and financial planners, Sheree's goal is to help her clients reach a settlement in a cost-effective manner.

Preston Law

Preston Law is a proudly local Cairns law firm comprised of Cairns lawyers servicing local, national and international clients.

Our diverse client base includes government instrumentalities, regional councils, commercial and corporate enterprises and individuals.

Locally, we provide a full range of legal services and whole-of-business solutions to a diverse range of clients in the public and private sectors across North Queensland including Cairns, Townsville, Atherton Tablelands, Cape York, Gulf of Carpentaria and the Torres Strait.

Our team of Cairns solicitors is structured to provide timely and effective legal advice to our clients based on our exceptional level of service.

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