

HOW TO SURVIVE SEPARATION

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I have just separated.

What should I do now?

The breakdown of a relationship is one of life's biggest events and greatest stresses. In the midst of the turmoil it's difficult to know what to do. If you or anyone you know has separated, here are some tips on what to do next.

1. Stay Calm

There is life after separation. The decisions you make now may have important consequences later. Try not to make decisions in the heat of the moment.

Make rough plans that meet your needs. Remember to keep any plans flexible.

2. Seek expert help

Contact Michael Lynch Family Lawyers and we can provide you with a list of experts and organisations in different fields that are able to assist you.

3. Consider counselling

Counselling can help parents to work through issues of child welfare or other problems resulting from separation.

Either individually or jointly it may be able to assist the survival of the relationship or, at the least, allow for some practical consideration of personal arrangements moving forward.

4. Consider mediation

But get your own family law advice before going to a mediation.

Mediation explained

A mediator is a neutral third party who arranges a meeting between you and your spouse to help you find a solution to your dispute.

Solicitors sometimes sit in on mediation sessions with their clients. If your solicitor does not sit in on your session, you can meet your solicitor afterwards and get legal advice before the next session.

If you reach an agreement during a mediation session, you can then speak to your solicitor who will prepare the agreement in writing.

5. Prepare a careful budget

6. Seek legal advice



Even if you and your spouse want to negotiate matters between yourselves, your solicitor will be able to give you the information you need to act in your own best interests.

Experienced Family Law solicitors, such as Michael Lynch Family Lawyers, try to settle matters without going to Court. They do this through negotiation.

Most matters are settled by negotiation.

Do not rely on the experience of friends and relatives who have had relationship problems. Your situation is probably different and the law may have changed since then.

7. Make any agreements formal

Once you and your spouse reach an agreement, make sure you make it formal.

A solicitor can explain the alternatives to you. This way you know that your agreement will be enforceable by the Court.

8. Ask your solicitor whether or not you should make a new will

9. Keep a diary of any incidents that relate to the children if you are having child welfare problems

10. Keep copies of all documents and letters sent to you by your solicitor

Also keep all receipts and invoices that relate to your financial situation.

11. Ask your solicitor questions if there is anything you do not understand

12. Ask about your legal costs

Solicitors' fees may vary from firm to firm. Some solicitors send accounts after specific stages.

You may prefer that your solicitor sends you monthly accounts so that you are clear about your costs as you go along.

Sort these things out up front as it will save you and your solicitor embarrassment and disagreements later.

13. Seek legal advice about where you can live

You may be able to obtain a Court Order that gives you sole use and occupation of your home.

14. Remember to take your personal papers if you do leave

15. Go back to collect your belongings if you need to

If you need to go back to get personal items that you left behind, but are afraid, you can ask the police to accompany you.

Frequently Asked Questions:

Can I Make An Agreement With My Spouse Without Having To Go To Court?

It is always preferable to reach an agreement. You can try to do this through counselling, [mediation](#) or negotiation.

What Sort Of Agreement Do I Need?

The type of agreement will depend on the issue.

The most common types of agreements are those that relate to:

- children – Consent Order or Parenting Plan;
- property settlement and/or spouse maintenance – Consent Order or Binding Financial Agreement; and
- child support – Child Support Agreement.

When Can I Get A Divorce?

Family Law in Australia is based on a 'no fault' principle. The only ground for divorce in Australia is 12 months separation.

It is possible for you and your spouse to 'live under the same roof' and to still satisfy the required 12 months separation.

When calculating 12 months separation, any periods of reconciliation that are less than three months long are not counted, and do not stop a 12-month period from being calculated.

You may apply for a divorce either individually or together.

Divorce applications are handled by the Federal Circuit Court.

A Divorce Order becomes final one month and one day after it is made. Neither person is allowed to re-marry before the Order becomes final.

In marriages where there are children under 18 years, the Court must be satisfied that appropriate arrangements have been made for their care.

Once the Divorce Order has become final, you have a deadline of 12 months in which to start proceedings for property settlement, if not finalised already. After 12 months you must apply to the Court to be allowed to start an application.

Do I Have To Change My Name?

A woman is not legally obliged to use her husband's surname when she marries. The use of the husband's surname has developed through custom.

If you decide to use your husband's surname, you can change back to your maiden name at any time you want to. This often happens after separation.

Do I Have To Support My Spouse?

Spouse maintenance is where a payment is made by one spouse to the other because of a significant difference in the amount of income.

There is no formula to apply in determining the amount of spouse maintenance, rather there are a number of factors that the Court takes into account when deciding whether maintenance has to be paid.

Any money received from an income-tested pension or benefit is ignored by the Court when deciding if maintenance will be paid or not.

Sometimes the Court will say that maintenance must be paid for a specific period of time so that the other person can complete a training course.

Maintenance payments will end if any of the following occur:

- the person receiving maintenance remarries;
- the person receiving maintenance dies; or
- the person paying maintenance dies.

If you believe you would like Family Law advice, please contact Michael Lynch Family Lawyers on (07) 3221 4300 or by filling out our online form [here](#), and we will be able to assist you.