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# You and family law: a short guide

This booklet explains how ending a relationship affects you, your children and your property.



## Do you need this booklet in a different format?

Please go to [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au) and search *You and family law: a short guide*. You can also phone (03) 9269 0234 and ask for Community Legal Education. We can talk with you about what you need.

### Produced by Victoria Legal Aid

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For free information about the law and how we can help you:

- visit our website ([www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au))
- use our Legal Help Chat on the website, Monday to Friday, 8 am to 6 pm, excluding public holidays
- phone Legal Help on 1300 792 387, Monday to Friday, 8 am to 6 pm, excluding public holidays.

For business queries, call (03) 9269 0234.

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### Changes to the law

The law changes all the time. To check for changes you can visit our website, use our Legal Help Chat or phone us.

**Disclaimer:** This publication is a general guide only. It is not legal advice. If you need to, please get legal advice about your situation.

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## Victoria Legal Aid

We serve the Victorian community by providing information, legal advice and education with a focus on the prevention and early resolution of legal problems.

We prioritise more intensive legal services, such as legal advice and representation, to those who need it the most, using evidence to inform what we do. We also recognise the connections between legal and social issues in the way we do our work and advocate for change.

We work to address the barriers that prevent people from accessing the justice system, by participating in systemic reforms and strategic advocacy.

## Acknowledgement of Country

This booklet was published on the lands of the Wurundjeri and Bunurong peoples of the Kulin Nation. We acknowledge and pay our respects to Aboriginal and Torres Strait Islander peoples and Traditional Custodians throughout Victoria, including Elders past and present. We acknowledge and pay our respects to Aboriginal and Torres Strait Islander peoples and Traditional Custodians throughout Victoria, including Elders past and present. We also acknowledge the strength and resilience of all First Nations people who today are still arrested and imprisoned at rates far higher than other Australians.

# ABOUT THIS BOOKLET

## Who this booklet is for

This booklet is for anyone who needs basic information on family law. It is for people who are thinking about ending a relationship (separating) or who have separated.

Family law covers separating, divorce, caring for children, financial support and dividing property. We include information about how you can try to work things out without having to go to court, and where to go for help.

Families come in all shapes and sizes. The information in this booklet is for all families, including people who are lesbian, gay, bi-sexual, trans and gender diverse, intersex, queer and questioning (LGBTIQ+).

This booklet has basic information about the law. It is a good idea to talk to a lawyer about what these laws mean for your family.

## Legal words

We have explained some words in ‘What do these words mean?’ on page 3. These words are also highlighted in **bold** the first time they appear in each section.

## What the law says

In Australia, the law does not look at whose fault it is that the relationship ended. The law’s main concerns are making sure all family members are safe, doing what is best for the children and dividing property fairly. It is not about who is right and who is wrong. It is about making arrangements for the future.

We say ‘children’ throughout this booklet, but the laws are the same for a single child.

## Getting more help

Any relationship breakdown is stressful. It can be especially hard if you have children or you are worried about money. Making decisions at this time is not easy, but you can get help.

It is usually better if you and your former partner can agree about what happens with children and property. There are services that can help you make an agreement.

The most important thing is that you and your children are safe. If you are worried, get help. Get legal advice so you understand your choices. Talking to a lawyer does not mean you have to go to court. However, lawyers can help you do this, if you need to.

You can ask for an interpreter for legal advice, family dispute resolution, police or court.

**Go to** 'Family dispute resolution' on page 16, 'Family violence' on page 11 and 'Where to get help' on page 31.

## WHAT DO THESE WORDS MEAN?

**arbitration** – an independent person listens to each person then makes a final decision they must follow. Arbitration can only be used for disagreements about property

**assets** – property that you own such as the family home, money, investments, inheritances, shares, superannuation, cars, jewellery and household items

**caveat** – a notice saying that someone thinks they have rights over a house or land

**consent order** – an agreement that is approved by the court and then made into a court order

**court order** – a document made by the court saying what must happen. For example, where children live or how property is divided

**de facto couple** – two people who are not married, but live together like they are married, regardless of gender or sexual preference. Sometimes this is called a ‘domestic relationship’ or ‘domestic partnership’

**divorce** – an order made by a court that ends a marriage

**family dispute resolution** – a trained professional helps family members agree about things like where children will live and how to divide property. This might happen before or after separation. Sometimes this is called ‘mediation’

**family violence** – hurting someone in your family or making them feel scared. The violence might be physical, sexual, emotional, verbal, social or financial. This includes children seeing and hearing violence in the family. Sometimes this is called ‘domestic violence’.

**Go to** ‘Family violence’ on page 11.

**family violence intervention order** – a court order made in Victoria to protect someone from family violence. It tells another family member not to do certain things, like speak to them, or they will break the law. The court makes different orders, depending on what each family needs

**final order** – the order a court makes to finish a case

**interim order** – a temporary order made by a court. It lasts until the court makes another order

**lawyer** – a trained professional who can advise you about the law and represent you in court. Sometimes lawyers are called ‘solicitors’ or ‘barristers’

**parenting plan** – a written agreement between parents or other important people in the children’s life. This can include who the children live with and who they spend time with

**parenting order** – a court order about children. This can include who children live with and who they spend time with

**property settlement** – how property is divided when a relationship ends. People can agree how to divide the property, sometimes with help from lawyers or family dispute resolution. If they cannot agree, they might have arbitration or ask a court to decide for them

**separation** – when you stop living together as a couple, even if you still live in the same house

**spousal maintenance** – paying money to a former partner so they have enough to live on

**Will** – a legal document that says who gets someone’s property when they die

**witness** – a person who saw or heard something about your case. They might be asked to give this information to the court



# SEPARATION

## What is separation?

**Separation** is when one or both people decide to stop being a couple. You can separate but still live in the same house.

## How do I separate from my partner?

You can decide to separate from your partner and tell them. They do not have to agree, and you do not need anyone's permission. There is no legal process that you must follow. You will not get a certificate saying you are separated. However, it may be important to remember the date you separated.

There are some things you need to do when you separate:

- Tell organisations such as the Services Australia (Centrelink, Medicare, and Child Support) that you are separated.
- Tell your family and friends. Do not keep your separation secret.
- Make arrangements for your children, like deciding where they will live.
- Protect yourself online, for example change any passwords that your former partner might know.
- Sort out your money and property. Work out how bills and debts will be paid. Decide what to do about any joint bank accounts, superannuation or insurance. Think about how your **assets** will be divided.
- Change your **Will**.
- Contact your superannuation fund. Tell them who should now get your superannuation and insurance if you die (these are called your 'nominated beneficiaries').

Doing these things will also help if you need to prove that you are separated.

**Go to** 'Children' on page 19 and 'Property and money' on page 26.

## What if I am on a visa?

If you are worried about whether you can stay in Australia if you leave your partner, speak with a **lawyer**.

**Go to** 'Where to get help' on page 31.

## Does one of us have to leave the family home?

If there has been **family violence**, a court can say that one person must leave the family home.

**Go to** 'Family violence' on page 11.

Otherwise, you decide if you want to leave or stay in your home. Your partner has the same choice.

You can agree to both live in the same house after separation. If you do, you might need to prove that you are really separated. This might include telling the court about:

- where you both sleep
- what cooking and cleaning you each do
- whether your family and friends think you are separated
- how you each manage your money
- how you communicate with each other.

## Do I lose my rights if I leave?

No. If you leave the family home, you will not lose your rights to the house or your things. You may also be able to return later. The most important thing is to make sure you and your children are safe.

## What should I take if I leave?

It is best to take all your legal and financial papers with you, if that is safe. This includes:

- birth and other certificates
- your Will
- passports
- visas
- ATM cards, bank statements and cheque books
- superannuation, tax and other financial papers.

You can also take:

- personal things that you are worried about leaving behind, such as photos
- practical things you need for yourself and your children if they are going with you. This includes clothes and toys.

If you apply for a **family violence intervention order**, the court can order the other person to return your things, or let you collect them. A police officer might come with you to collect your things.

### Can I take the children with me?

Yes, but you should try to agree with the other parent about parenting arrangements. This includes which parent the children live with, and which parent they spend time with. It is a good idea to write this down. You should encourage an agreement that is safe for everyone. This includes the children, you, and anyone else who has care of the children. You should also think about whether moving will be best for the children. If possible, get legal advice, even if you both agree about what should happen.

If you or the children might get hurt, get help quickly. Call the police on 000. A family violence service can also help you. Get legal advice as soon as possible.

**Go to** 'Where to get help' on page 31.

### What if I am renting?

If you and your former partner are renting a property together, you are both responsible for paying rent and fixing any damage. If you decide that one of you will move out, you should ask the rental provider (landlord) or agent to change the rental agreement.

**Go to** 'Where to get help' on page 31.

# DIVORCE

## What is divorce?

**Divorce** is when a court makes an order to officially end your marriage. Your partner does not have to agree. The law does not look at whose fault it is.

**De facto couples** do not have to get divorced as they were not married.

## When can I get a divorce?

You can apply for a divorce if your marriage has broken down, with no chance of you getting back together. You must be **separated** for at least 12 months and one day. If you were married for less than two years, extra conditions apply.

You can live in the same house, but you must live separate lives. You may have to prove this.

If you get back together then separate again, you can still get divorced, but the time limits will change.

If you are back together for less than three months, you need to add this time to your 12 months' separation. For example, if you were together for one month, you need to wait 13 months from the date you first separated before you can get a divorce.

If you are back together for more than three months, you need to separate for another 12 months before you can get a divorce.

## Do I have to get a divorce?

No. However, you must be divorced if you want to marry again.

You can make decisions about your children and property without being divorced. If possible, try to make these arrangements soon after separation.

If you stay married, it can affect you financially and change what happens with your **Will**.

## How do I get a divorce?

You can apply for a divorce at the Federal Circuit and Family Court of Australia. You or your former partner must be an Australian citizen or usually live in Australia.

You can apply for a divorce in Australia, even if you were married overseas. You can also apply if you do not know where your partner is. However, there are extra things you will need to do. Talk to a **lawyer** if you are in this situation.

You must pay money to apply for a divorce.

Visit the Federal Circuit Court and Family Court of Australia's website to apply for a divorce online. Contact the court if you need more information or cannot apply online.

**Go to** 'Where to get help' on page 31.

## Do I need a lawyer to get a divorce?

It is up to you. Most people apply for a divorce without using a lawyer. You may need help from a lawyer to sort out arrangements for children or property.

## What if we have children?

The court will want to make sure that you have made proper arrangements for the children before it agrees to the divorce.

**Go to** 'Children' on page 19.

## How does divorce affect my property and money?

If you already have a **property settlement**, getting divorced won't affect your property. If you do not have a property settlement, you must apply within 12 months of your divorce becoming final. A property settlement is a decision about how your property will be divided.

If you need **spousal maintenance**, you must apply within 12 months of your divorce becoming final. Spousal maintenance is when one person pays money so that their former partner has enough to live on.

**Go to** 'Property and money' on page 26.

### How long does it take?

It usually takes several months for the divorce to become final. If your situation is complicated, it may take longer.



# FAMILY VIOLENCE

## What is family violence?

**Family violence** is when someone hurts another person in their family or makes them feel scared. 'Family' includes people who are married, **de facto couples** or other intimate relationships, children, carers or someone considered part of the family.

Family violence can include:

- threats and intimidation, and repeated harmful comments – for example, 'I will hurt you if you leave this home', 'you will be sent back to your country' or 'you are useless and stupid'
- physical violence – for example, hitting, pushing or throwing things
- stalking – for example, following you when you go out or monitoring your phone calls and emails
- sexual violence – for example, forcing you to have sex
- emotional threats – for example, 'no one will love you' or 'I will keep the children'
- economic abuse – for example, controlling your spending or access to money, especially if you depend on the other person for money for you and your children.

Family violence can also include controlling behaviour such as stopping you from seeing your family and friends and from keeping connections with your culture. It can also include other behaviour, such as deliberately damaging your property or harming your pets.

Family violence includes when children hear, see or know about the violence. For example, if children comfort a family member or see police arrive because of family violence.

No one has the right to hurt or threaten another person. These laws protect everyone who lives in Australia, including people who are on a visa.

## What can I do if there is family violence?

Make sure you and your children are safe. You can:

- call the police on 000
- call a family violence service
- get legal advice
- apply for a **family violence intervention order**
- get support from family and friends.

If you identify as female, you can call Safe Steps Family Violence Response Centre (24 hours) on 1800 015 188.

**Go to** 'Where to get help' on page 31.

## What is a family violence intervention order?

A family violence intervention order is an order made by a court in Victoria to protect someone from family violence. It tells another family member not to do certain things, or they will break the law. The court makes different orders, depending on what each family needs. For example, the court might order someone not to:

- hurt, harass or threaten another person
- come near another person or their home, school or workplace
- damage or threaten to damage another person's property
- get someone else to do these things for them
- have a gun.

The court can also order someone to return the other person's property. Anyone who lives in Victoria can apply for a family violence intervention order.

Family violence intervention orders work in other states and territories, to protect people who move.



## How do I get a family violence intervention order?

You can apply at any Magistrates' Court. You will need to fill in forms and tell the court what happened and why you need an order. If you need an interpreter, ask the court to get one.

Sometimes, the police will apply for you. Police can also make a 'family violence safety notice' which protects you immediately. This is like a family violence intervention order but lasts a shorter time. The police must use an interpreter if the family members involved do not understand enough English.

You can get help to apply for an order from a family violence service, Victoria Legal Aid or a community legal centre. You can get more information about family violence intervention orders from the Victoria Legal Aid website.

**Go to** 'Where to get help' on page 31.

## What happens at court?

When you or the police apply for a family violence intervention order, the court will make a date to hear your application. You will usually need to go to the court on that day. If you are not sure whether you need to go to court, get legal advice.

The other person has a right to argue against an order being made. You might need to go to court more than once. You might need to bring **witnesses** to support your story. Talk to a lawyer about what you need to do.

The court will make an order if it thinks you have experienced family violence and need protection. To keep you safe until your case finishes, the court might make an **interim order**. The police will give a copy of this order to the other person. This might last until the next court date or until the court makes a **final order**.

The court can also make orders protecting children.

Going to court can be stressful and confusing. A lawyer can help you get ready for court and help you at court.

**Go to** 'Where to get help' on page 31.

## What if the order is not followed?

This is against the law. If the other person does not do what the order says, call the police.

## Can family violence intervention orders be changed?

Family violence intervention orders can last for a short or long time. They can be changed or stopped, but only if the court agrees. You or the other person can apply to the court to change or stop an order. You must prove that things have changed. For example, if you want to live together again, you will need to tell the court why that is now safe.

A lawyer can help you make this application. **Go to** 'Where to get help' on page 31.

## What if there is a family violence intervention order against me?

If an intervention order has been made against you:

- do what the order says, even if you do not agree with it. Read it carefully. For example, you may be able to stay at home, but cannot hurt or abuse the other person
- go to court. An order can be made even if you do not go
- get legal advice. These orders are serious
- get support from family, friends or a support service.

If you identify as male, you can call the Men's Referral Service on 1300 766 491.

We have information about responding to family violence intervention orders on our website Victoria Legal Aid ([www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)).

**Go to** 'Where to get help' on page 31.

## Can I still contact my children?

A family violence intervention order may let a parent see or communicate with their children if there is a **parenting order**, or if the parents and court agree visits should happen.

## What if it is not safe for children to have contact with a parent?

The court will not let a parent see or communicate with their children if they do not think it is safe. This might mean that the court stops or changes a parenting order.

If you are worried that your children might get hurt physically or psychologically by their other parent, get legal advice and other support quickly.

**Go to** 'Children' on page 19 and 'Where to get help' on page 31.



# FAMILY DISPUTE RESOLUTION

## What is family dispute resolution?

**Family dispute resolution** can help you to make an agreement without having to go to court. A family dispute resolution practitioner is an independent, trained professional. They work with you and your former partner to help sort out problems and make an agreement about things like where children will live and how to divide property. Sometimes this is called 'mediation'.

Family dispute resolution may or may not be confidential. Always ask.

## When can I try family dispute resolution?

You can use family dispute resolution at any stage, even before **separation** or after a court case has started.

## Do I have to go to family dispute resolution?

You do not have to use family dispute resolution if you have already agreed what will happen.

If you cannot agree and want **court orders** about children, you usually have to try family dispute resolution first. The court will tell you how to do this. If you want court orders about property, the court may also get you to try family dispute resolution first.

Before the court will hear your case, you may need to prove:

- that you tried family dispute resolution, but it did not work
- that family dispute resolution is not suitable for you. For example, if there is **family violence**.

You may need a certificate from the family dispute resolution service that says this.

In some situations, you do not need to try family dispute resolution and do not need a certificate from a family dispute resolution service. For example, if there has been family violence, child abuse or in urgent situations. Speak to a **lawyer** about this.

### Do we have to make an agreement?

You do not have to follow agreements made in family dispute resolution. If you want to make sure the agreement will be followed, you can ask the court to make your agreement into a **consent order**.

### Do we need a parenting plan?

Some people find it helpful to have a **parenting plan**, which is a written agreement about the children. If your parenting plan was made after 1 July 2006, you can agree to change the arrangements yourselves. You do not need to go to court. If you already have parenting court orders, the parenting plan must be followed where it is different from the orders. An exception to this is family violence intervention orders, which must always be followed.

A lawyer can help you understand what agreements you have made and whether you must follow them. They can help you apply for a consent order about children or property.

**Go to** 'Children' on page 19 and 'Where to get help' on page 31.

### What if there is family violence?

Tell the family dispute resolution service if you are worried about your safety. Family dispute resolution services take family violence very seriously. They may be able to hold family dispute resolution with each person in a separate room or building, or over the phone. In some cases, they may say that family dispute resolution is not suitable because of family violence. If that happens, they will give you a certificate so that you can apply for court orders instead.

### What if my former partner refuses to go?

Family dispute resolution cannot work unless each person involved agrees to do it. If someone refuses to go, you may need the court to decide instead. You will need to explain to the court that you have asked for family dispute resolution, but the other person refused. If you are applying for a parenting order, the family dispute resolution practitioner can give you a certificate that says this.

### What if family dispute resolution does not work?

If you try family dispute resolution and it does not work, you can go to court. If your disagreement is about property, you might use **arbitration** instead.

### What does family dispute resolution cost?

Some family dispute resolution services are free. Others charge different rates depending on your financial situation. Contact the service and ask how much they charge.

### How do I find family dispute resolution?

Family dispute resolution is provided by Family Relationship Centres and other services. You can call the Family Relationship Advice line for a referral. You may also be eligible for Victoria Legal Aid's Family Dispute Resolution Service.

**Go to** 'Where to get help' on page 31.

## CHILDREN

### Does it matter if we were not married?

No. The same laws apply to all children.

### What is the best way to make arrangements for the children?

It is important to think about what is best for the children and to make sure they are safe. If possible, try to come to an agreement with your former partner. **Family dispute resolution** can help you make decisions about your children, like where they live and who they spend time with. A **lawyer** can also help negotiate with your former partner. If you can agree, write this agreement down. Get legal advice before you sign the agreement.

**Go to** 'Where to get help' on page 31.

### Can grandparents and other family be involved?

Other family members, like grandparents, step-parents, aunts and uncles can play an important part in children's lives. They can be included in family dispute resolution, parenting plans or court orders. Try to work it out together. Get legal advice.

**Go to** 'Where to get help' on page 31.

### What is a parenting plan?

A **parenting plan** is a written agreement, signed and dated by both parents or other people involved. A parenting plan should include:

- where the children live
- who the children spend time and communicate with
- school or childcare
- medical issues
- religious or cultural practices
- financial support for the children

- how parental responsibility is to be shared. This means who will make long-term decisions about children
- how disagreements about parenting arrangements will be sorted out
- how the parents, or other people involved, will communicate with each other.

It is best to get legal advice before you sign a parenting plan.

**Go to** 'Where to get help' on page 31.

### **Do I need to go to court?**

If you can agree, you do not need to go to court. If you want to make sure everyone must follow the agreement, you can apply to the court for the agreement to be made into **consent orders**.

If you cannot agree, you or the other parent can apply to the court for a **parenting order**.

If the other parent applies to the court, you will be told and must go to court if you can. If you cannot go to court on a certain day, let the court know and get legal advice.

You usually have to go to family dispute resolution before the court will hear your case.

**Go to** 'Family dispute resolution' on page 16.

Courts are not part of the government, police or any other agency. Most cases are open to the public, unless the court says otherwise. The court will hear from each person involved, including **witnesses**, and then decide.

Get legal advice before you go to court.

**Go to** 'Where to get help' on page 31.



## What is a parenting order?

A parenting order can say where the children live, who they have contact with and other issues such as where they will go to school. The court's main concern is what is best for the children. This is called the children's best interests.

## What is in a child's 'best interests'?

The court decides what is in a child 'best interests' by considering:

- safety for the children and any caregivers
- any family violence history
- the child's views
- the child's developmental, psychological, emotional and cultural needs
- the capacity of each person with parental responsibility, to provide these needs
- the benefit to the child of a relationship with their parents and other significant people, for example grandparents
- anything else that are relevant to the child's circumstances.

You will have to go to a court hearing. A lawyer can give you advice, help you get ready for court and help you at court. The court will consider more things if the child is Aboriginal or Torres Strait Islander.

**Go to** 'Where to get help' on page 31.

## Do children have to spend equal time with each parent?

No, the law does not say that children must spend time with both parents equally. How much time children spends with a parent depends on the children's best interests. Think about what arrangements are best for your children and what will work for your family. That may be:

- equal time
- substantial and significant time – this includes weekdays, weekends, holidays and special events
- some other amount of time.

Try to make an agreement where both parents believe the children's needs are being met. This includes thinking about the quality of care children will have and arrangements that make them feel safe and settled.

If you cannot agree how much time children spend with each parent, you can apply to the court for a parenting order. The court will think about whether it is best for the children to have equal time with both parents or another amount of time with them.

## Who supports the children financially?

Every parent should support their children financially. 'Child support' is the financial support paid by one parent to another, to help with the costs of a child. The amount to be paid depends on:

- the income of each parent
- the amount of time each parent spends with the children
- the number and ages of children involved
- if either parent has to support other people financially.

There are other factors which may affect your child support. It is important that you get legal advice.

You can get more information about child support from the Victoria Legal Aid website or order our publication *Child support and the law*. Go to the back cover for help with ordering.

If you are having trouble with child support payments or would like legal advice, contact Victoria Legal Aid.

**Go to** 'Where to get help' on page 31.

### **What if my children do not want to visit their other parent?**

This will depend on the children's ages and if there are court orders about spending time with that parent. If the children refuse to visit, you should encourage them to go, unless you think it is unsafe. If you believe that spending time with the other parent might seriously harm your children, get legal help quickly. You might also need to contact the police and other authorities.

**Go to** 'Where to get help' on page 31.

### **What if court orders are not being followed?**

If the court order says the children can see or talk to you, and the other parent is not letting them, talk to a lawyer to find out what you can do.

If the children live with you and the other parent does not turn up to spend time with them, you cannot force the other parent to do this. If this keeps happening, you can ask the court to change the orders. It is a good idea to keep notes or a diary so you will remember what happened. Get legal advice about making sure court orders are being followed, or if you want to change an order.

**Go to** 'Where to get help' on page 31.

## What if the arrangements are not working?

Over time things change and new arrangements may need to be made. It is best to talk about this with the other parent and try to agree what should happen. You can use family dispute resolution to help you make a new agreement. If there are court orders, you will need to ask the court to change them. You must follow the court orders you already have, until a court changes them. A lawyer can help you apply to the court to change the orders.

**Go to** 'Where to get help' on page 31.



## Can I take my children interstate or out of the country?

Ask the other parent to agree to this in writing. You may need this to apply for a passport for the children. The other parent does not have to agree, and it might depend on whether you are taking the children on a holiday or moving. If the other parent does not agree, you may need to get a **court order**.

The children's relationship with their other parent and other important people can be affected if you move away.

If there are parenting orders, get legal advice before doing anything that may break them. The court can make orders to find and return children if they have been taken or kept without permission.

## What if my children are not returned?

Even if there are no court orders, you can apply to the court to have the children returned.

If there is an order that the children live with you, it does not automatically mean the police can return them to you. You may need to get another court order to have the children returned. This type of order is called a 'recovery order'.

Get urgent legal advice if you think that the other parent may take your children out of the country without your permission. The court can make orders to stop this happening. The courts have a 24-hour telephone number for these situations: 1300 352 000.

**Go to** 'Where to get help' on page 31.

## PROPERTY AND MONEY

### What is a property settlement?

A **property settlement** is a decision about how your property will be divided. You and your former partner can agree how to divide the property. You may get help from a **lawyer** or **family dispute resolution** service. If you cannot agree, you can have **arbitration** or ask a court to decide for you.

### Does it matter if we were not married?

If you were a **de facto couple** you can both agree to a property settlement.

If you need to apply for **court orders**, there may be some differences for de facto couples. You can usually still apply to the Federal Circuit Court and Family Court of Australia if:

- you were in a relationship for more than two years
- you have a child or children together
- you have registered your relationship. For example, with the Registry of Births, Deaths and Marriages Victoria
- one of you has given a lot of money or property to the relationship.

If this does not apply to you, you may need to apply to another court to decide. Get legal advice.

**Go to** 'Where to get help' on page 31.

### What happens if we agree?

It is a good idea to try to agree how property will be divided. A lawyer or family dispute resolution service can help you make an agreement. It is important to get legal advice before signing any agreement, even if you did not use a lawyer to help with negotiations.

You can ask the court to make your agreement into a **consent order**, which must be followed. However, the court will not make that order unless it is fair to both of you.

**Go to** 'Where to get help' on page 31.

### What if we cannot agree?

If you cannot agree, you can go to arbitration or apply to the court to make a property settlement for you.

### What property can I have?

There are many things to consider when dividing property, especially if there are children. It may not matter whose name is on a document saying they are the owner, or who bought an item or borrowed money. Even if you earn little or no money, you might still have rights to property.

### What should the property settlement include?

All your **assets** and debts should be included in the property settlement. That means everything you own or owe yourself, with another person, by a family trust or family company.

It should include:

- houses and land, including the family home
- money, including cash and in bank accounts
- investments
- insurance policies
- inheritances
- shares
- superannuation
- jewellery
- any other property either of you own
- any debts. This means money you owe, including mortgages, loans and credit cards.

## How does the court decide who gets what?

Usually after separation it will be fair to divide property. The court will ask you to try to reach an agreement about how to divide your property. If you cannot agree, the court will decide if an order is needed and how property will be divided.

This is the process the court will follow:

1. Identify and value all assets and debts of the relationship. This can include things you got before or even after the relationship.
2. Decide if a property settlement is needed.
3. Look at what each person has given to the relationship. This includes earnings, savings, gifts, inheritances or property owned before the relationship, improvements to property, and unpaid work as a homemaker and parent.
4. Consider the future needs of each person, including:
  - how much money each person could earn in the future
  - the age and health of each person
  - the care and financial support of children
  - any responsibility for looking after other people.

The court looks at all these things, as well as the length of the relationship, in deciding what is fair. It does not look at who is to blame for the relationship ending, or who left the relationship.

## Do I lose my rights to property if I leave the house?

No. If you leave the house, you do not lose your rights to a share of the house, or other property. But get legal advice, if you can, before you leave. Also think about what you might want to take with you.

**Go to** 'Separation' on page 5.



## How can I protect my property?

Keep track of all assets and debts until financial arrangements are complete. You may want to take photographs and other records. It may be possible to put a **caveat** on a property title. A caveat is a notice telling other people that you have rights over the house or land.

You can also get **court orders** to stop property being sold or money being spent.

Act quickly and get legal help as soon as you can.

**Go to** 'Where to get help' on page 31.

## Spousal maintenance

A person may have to pay money so that their former partner has enough to live on. This is called **spousal maintenance**. This can happen if you were married or a de facto couple. Spousal maintenance might be paid as well as, or instead of, a property settlement.

## When should I apply for a property settlement or spousal maintenance?

If you need a court order, you can apply to the court any time after **separation**. It is important to try to sort it out as soon as possible. Usually there will be debts to be paid, as well as assets to divide. Do not delay.

If you get a **divorce**, you must apply to court for property orders or spousal maintenance within 12 months, or you need special permission. If you are a de facto couple, you must apply within two years of the date of separation.

## Who can help?

A lawyer can:

- explain what to include in your property settlement
- give you advice about your rights and responsibilities
- negotiate with your former partner
- write your agreement down
- check an agreement before you sign it
- help you apply to court for consent orders once you have an agreement
- help you apply for court orders if you cannot agree.

Family dispute resolution services can help you sort out an agreement, but they cannot give you legal advice.

A financial counsellor can help if you have financial problems. For example, if you have debts that you cannot pay.

**Go to** 'Where to get help' on page 31.

## WHERE TO GET HELP

### Victoria Legal Aid

For free information about the law and how we can help you:

- visit our website [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)
- use our Legal Help Chat on the website, Monday to Friday, 8 am to 6 pm, excluding public holidays
- phone Legal Help on 1300 792 387 Monday to Friday, 8 am to 6 pm, excluding public holidays.

### Do you need help calling us?



Interpreter

#### Translating and Interpreting Service (TIS)

Phone: 131 450

Visit the [TIS website](http://www.tisnational.gov.au) ([www.tisnational.gov.au](http://www.tisnational.gov.au))



#### National Relay Service

TTY: phone 133 677

Speak and Listen: phone 1300 555 727

Internet Relay users: visit the [National Relay Service](https://nrschat.nrscall.gov.au/nrs/internetrelay) (<https://nrschat.nrscall.gov.au/nrs/internetrelay>)

SMS relay: text 0423 677 767

Video Relay: use Skype or the National Relay Service app

## Local offices

We have offices all over Victoria. For more information visit the Our offices page on our website ([www.legalaid.vic.gov.au/our-offices](http://www.legalaid.vic.gov.au/our-offices)).

All offices are accessible to people with disability.

## Legal information and publications

The Victoria Legal Aid library at the Melbourne office is open to the public from Monday to Friday 9 am to 5 pm.

Victoria Legal Aid produces free publications about family law and child support. Some publications are available in languages other than English.

To order Victoria Legal Aid publications, visit the Victoria Legal Aid website or call (03) 9269 0234 and ask for Community Legal Education.

## Victoria Legal Aid Family Dispute Resolution Service

We have a confidential Family Dispute Resolution Service, where a trained professional helps people reach their own agreements.

Ask your lawyer for more information or call our Legal Help service on 1300 792 387.

## Family Advocacy and Support Services

Family Advocacy and Support Services (FASS) has duty lawyers and social workers to support people affected by family violence. This service helps clients by treating both the legal problem and by addressing its underlying causes.

You can find the Family Advocacy and Support Services at:

- the Federal Circuit and Family Court of Australia in Melbourne and Dandenong registry
- other locations of the court (Geelong, Warrnambool, Ballarat, Bendigo, Shepparton, Mildura and Morwell) when it is sitting at these locations.

Phone: (03) 8610 9803

[www.legalaid.vic.gov.au/family-advocacy-and-support-services](http://www.legalaid.vic.gov.au/family-advocacy-and-support-services)

## Other legal services

### Federation of Community Legal Centres

Call the Federation to find a community legal centre that can help you. Interpreters can be arranged.

Phone: (03) 9652 1500

[www.fclc.org.au](http://www.fclc.org.au)

### Law Institute of Victoria Legal Referral Service

The Law Institute of Victoria offers a free legal referral service. You can have a free 30-minute interview with up to three law firms. No legal advice is provided. You can discuss costs with the lawyer before you decide to hire them.

Phone: (03) 9607 9550

[www.liv.asn.au/find-a-lawyer](http://www.liv.asn.au/find-a-lawyer)

### Djirra

Support for Aboriginal women dealing with family violence.

Phone: 1800 105 303

[www.djirra.org.au](http://www.djirra.org.au)

### Q+Law

Free, state-wide, safe entry point for legal assistance for all LGBTIQ+SB Victorians.

Phone: (03) 9968 1002

[www.qlaw.org.au](http://www qlaw.org.au)

### Tenants Victoria

Free advice for anyone renting a home in Victoria.

Phone: (03) 9416 2577

[www.tuv.org.au](http://www.tuv.org.au)

### Victorian Aboriginal Legal Service

Phone: 1800 064 865 (toll free)

[www.vals.org.au](http://www.vals.org.au)

## Courts

### Family Law National Enquiry Centre

For all family law enquiries in the Federal Circuit and Family Court of Australia.

Phone: 1300 352 000 (8:30am to 5:00pm (AEST), Monday to Friday)

[www.fcfoa.gov.au/fl](http://www.fcfoa.gov.au/fl)

### Magistrates' Court of Victoria

Phone: (03) 9628 7777 (Melbourne) or find your local court online.

[www.mcv.vic.gov.au](http://www.mcv.vic.gov.au)

## Government

### Australian Federal Police

If you have a parenting order and your child has been taken without permission, call the Australian Federal Police or visit your local police station.

Phone: 13 14 44

### Consumer Affairs Victoria

Information and advice about renting.

Phone: 1300 558 181

[www.consumer.vic.gov.au](http://www.consumer.vic.gov.au)

### Department of Families, Fairness and Housing

Child Protection Emergency Service: 13 12 78 (24 hours)  
During business hours, call the region where the child lives.

North Division Intake: 1300 598 521

South Division Intake: 1300 555 526

East Division Intake: 1300 360 452

West Division Intake 1300 360 462

### Services Australia

Phone: 13 61 50 (family assistance office) or 131 202 (multilingual line)

Phone: 13 12 72 Services Australia (Child Support)

[www.servicesaustralia.gov.au](http://www.servicesaustralia.gov.au)

### Registry of Births, Deaths and Marriages Victoria

Phone: 1300 369 367

[www.bdm.vic.gov.au](http://www.bdm.vic.gov.au)

## Family violence services

### Police (emergency)

Phone: 000

### Safe Steps Family Violence Response Centre

Phone: 1800 015 188 (24 hours)

[www.safesteps.org.au](http://www.safesteps.org.au)

### In Touch Multicultural Centre Against Family Violence

Phone: (03) 9413 6500 or 1800 755 988

[www.intouch.org.au](http://www.intouch.org.au)

### Men's Referral Service

Phone: 1300 766 491 (24 hours)

[www.ntv.org.au](http://www.ntv.org.au)

### The Orange Door

[www.orangedoor.vic.gov.au](http://www.orangedoor.vic.gov.au)

## Family relationship and support services

### Family Relationship Advice Line

Information and help with relationship and separation issues, including referrals to family dispute resolution and other local services.

Phone: 1800 050 321

[www.familyrelationships.gov.au](http://www.familyrelationships.gov.au)

### National Debt Helpline

Free advice and referrals to financial counsellors.

Phone: 1800 007 007

[www.ndh.org.au](http://www.ndh.org.au)

## Victoria Legal Aid resources

### To order publications

We have free booklets about the law in English and other languages.

Visit the Victoria Legal Aid website ([www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)) to order or download booklets.

Call (03) 9269 0234 and ask for Community Legal Education to find out more.

### Our public law library

Open Monday to Friday, 9 am to 5 pm  
570 Bourke Street  
Melbourne VIC 3000

# You and family law: a short guide

## Victoria Legal Aid

For free information about the law and how we can help you, please visit our website [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au). For more information or advice, call Legal Help on 1300 792 387 Monday to Friday 8 am to 6 pm.

## Offices

Melbourne

### Suburban offices

Broadmeadows

Dandenong

Frankston

Ringwood

Sunshine

### Regional offices

Bairnsdale

Ballarat

Bendigo

Geelong

Horsham

Mildura

Morwell

Shepparton

Warrnambool



## Publication orders

To download or order publications:

[www.legalaid.vic.gov.au/publications](http://www.legalaid.vic.gov.au/publications)

Phone: (03) 9269 0234

Email: [cle@vla.vic.gov.au](mailto:cle@vla.vic.gov.au)

