

# Seven Things You need to know before seeing a Lawyer



## *A Guide for Separated Parents*

Aaron Legal Solicitors

The breakdown of a marriage can be a difficult time made even more challenging by financial and legal issues following the separation. Restructuring a family can be a stressful process especially when children are involved.

Parenting agreements, child support and the division of properties are the most important and disruptive issues affecting separated couples.



Resolving family issues requires special assistance to help ease the transition, balance the rights and obligations of former partners and obtain the best outcomes for you and your children. Awareness, preparation and competent legal counsel are the keys to a smooth family law experience.

This report is a clear guide for families experiencing the pains of separation. It introduces legal rights and responsibilities in simple language with the ultimate goal of easing the transition from married to single life.

### **Step 1: Talk to someone**

Separation is a stressful time filled with many changes. It is important to seek support to help you cope and adjust. A counsellor or a close friend can listen to you and provide practical advice to help you move forward and manage the emotional impact of separating.

Children may also experience difficulty in dealing with a range of emotions and may require some help to process their feelings about the separation. Some children may display unusual behaviour and may need professional counselling to address negative feelings.

## Seven Things You need to know before seeing a Lawyer



### *A Guide for Separated Parents*

Aaron Legal Solicitors

There are professional and community services that can readily help you and your children adjust to separation. Find one nearest your home or get a referral from friends who have been through the same experience.

#### **Step 2: Get good advice**



Starting a new life after separation involves threshing out important issues about the future care of children, the allocation of property, and support obligations between you and your former partner.

You have rights pertaining to your children and properties held during the marriage. But rights carry corresponding obligations for which you will need legal advice from an expert in this area. Before making any important decision affecting your children and properties, it is best to seek legal advice from an attorney.

Your lawyer can:

- assess your situation
- advise you of the availability of counselling and mediation services
- provide appropriate legal advice
- inform you of your legal rights and duties
- explain how the law applies to your case
- assist you in reaching an out-of-court agreement with the other party
- review any agreement you have made and tell you how it can be changed or enforced
- advise you of the possibility of negotiating or narrowing issues for dispute resolution
- negotiate a financial settlement or parenting plan on your behalf
- represent and protect your interests in court

### **Step 3: Weigh options carefully**

Rushing to reach a decision can lead to undesirable consequences whether in the short-term or long-term for you and your children. An issue may be resolved in different ways, with each option bearing its own benefits and limitations.

Emotions tend to run high after a separation and can cloud your judgment. Avoid making important decisions when you are angry, sad or unable to control your emotions. Moreover, fear can place you at a disadvantage and influence your decisions during mediation.

You should inform your lawyer if you feel unsafe in out-of-court negotiations with your former partner due to a history of violence or abuse.

### **Step 4: Revenge can be bitter sweet (and not good for the kids)**

Former partners often come to court or mediation with wounded feelings or unresolved personal issues with one another. Thoughts of vengeance can prevent you from entering into voluntary parenting and financial agreements and from making the best decisions for you and your children.



Avoid using child support or child visitation to punish your ex spouse. Your children have a right to maintain loving ties with each parent and will cope much better when you and your former partner exert efforts to ease the transition through cooperation. It will help to focus on moving forward in the smoothest possible way and adopt a give and take attitude when negotiating the terms of separation agreements.

### **Step 5: Get your finances in order**

All property and financial resources belonging to you and your spouse are relevant in property settlement and maintenance (support) agreements. The settlement will also include interests in companies, family trusts and superannuation. You'll need to prepare a thorough inventory of all assets and liabilities such as unpaid debts and existing mortgages, and ensure that all your records are accurate by obtaining updated statements.

Defining your goals in a financial settlement or maintenance agreement is important for setting the tone of negotiation. Ask your lawyer about all your options for developing a settlement agreement, weigh them carefully, and clearly inform your lawyer about how you would like to negotiate with the other party and what's important to you.

### **Step 6: Child support**

You and your spouse are legally responsible for the financial support of your children until they reach the age of 18 or until completion of the



school year when the child reaches 18. Ideally, both parents must try to determine a fair evaluation of the financial costs of raising their children and their respective shares in child support through a voluntary agreement. If this is not possible, your options include obtaining a child

support assessment from the Child Support Agency (CSA) and a court order.

## Seven Things You need to know before seeing a Lawyer



### *A Guide for Separated Parents*

Aaron Legal Solicitors

A child support assessment is an administrative assessment based on a support formula applied to your situation. This formula considers several factors including the costs of raising a child and the combined income of parents after deducting self support. The CSA takes care of calculating the amount of support due from each parent and, if necessary, CSA disputes are usually heard by Social Security Appeals Tribunal (SSAT).

Applying for a court order on child support is a last resort and family courts will usually require you and your spouse to undergo alternative dispute settlement methods such as mediation before hearing an a child support order.

Collecting child support may be done in two ways: (1) through private arrangements where parents transfer payments between themselves or (2) through the CSA which will collect and transfer payments for you.

#### **Step 7: Is it necessary to go to court?**

##### **Family dispute resolution**



Your finances and parental responsibilities will undergo changes after separation and are potential areas of disagreement with your former partner. Family courts require parties to exert genuine effort in resolving disputes out of court.

A court will not hear an application for a parenting order unless it is accompanied by a certificate issued by an accredited family dispute resolution practitioner. The certification must state that the parties have already exhausted mediation and peaceful dispute resolution.

### **Advantages of settling issues out of court**

Many separated couples are able to reach an agreement while working with a lawyer and accountant during mediation. This process can save you from the usual high costs and animosity of litigation. Mediation is a useful method of settling family law disputes and allows you to negotiate the terms of an agreement with your former spouse using give-and-take.

By reaching an agreement, you can:

- \* Make your own decisions
- \* Improve communication with the other party
- \* Promote smooth relationship as parents
- \* Spare everyone in the family from further hostilities

### **What may be negotiated out of court**

#### **Parenting plan**

A parenting plan is a written agreement containing the details of child arrangements such as:

- \* Child custody and residence
- \* Shared or joint parenting
- \* Schedule and duration of visitation for the non-custodial parent
- \* Parental matters requiring joint or unilateral decisions
- \* Arrangements for special days such as birthdays and holidays
- \* Procedure for child handover including the time and place
- \* Telephone communication between parent and child
- \* Relocation and transfers of residence
- \* Child's passport and travel consents
- \* Child's medical, educational and religious needs



### **Financial arrangement**

A financial agreement is a written document which shows how you and your former partner intend to divide your property and settle other financial issues without any court action. It can deal with:

- \* Financial settlement after separation
- \* Superannuation entitlements
- \* Financial support or maintenance of one spouse by the other
- \* Other incidental issues

### **Effect of agreements negotiated out of court**

Parenting and financial agreements developed in mediation or family dispute resolution proceedings are not legally binding and require the Family Court's confirmation through an application of a consent order.

### **Applying for a consent order**



A consent order is a written agreement such as a financial agreement or parenting plan which is approved by the court. While court approval is necessary, the application for a consent order does not go through a hearing.

Before issuing a consent order, the Family Court will ensure that:

- the parties applying for a consent order were properly advised about its legal and financial consequences;
- the parties signed the agreement;
- the agreement is properly drafted; and
- its terms are 'just and equitable.'

## Seven Things You need to know before seeing a Lawyer



### *A Guide for Separated Parents*

Aaron Legal Solicitors

Your lawyer should provide legal advice about the effect of any proposed consent order before you affix your signature on it. Once issued, the consent order becomes a legally binding agreement and has the same effect as a court order issued by a judicial officer after a hearing.

If the other party does not comply with the terms of a consent order, you may file an application for the court to issue an order directing the other party to act according to the terms of the consent order. A party who breaches or violates a parenting order may also be liable for a range of penalties.

#### **When you don't agree about money and parental responsibilities**

Unresolved issues in parenting and/or financial arrangements may be brought before the Family Court of Australia or Federal Magistrates Court which can issue parenting or financial orders. Unlike the consent order, parenting and financial orders require full court proceedings where each party is allowed to present evidence.

Each type of court has jurisdiction or the authority to decide specific matters. The forms you will need and the processes you must follow will also depend on the court handling your case. These are technical matters that are best left to legal experts such as your family lawyer.

Your lawyer can assess your situation and help you determine which court to file an application for parenting or financial orders. Even when a case is pending in court, it is still possible for you to reach an amicable agreement with your former partner without a court hearing. Before making any important decision, always consult your lawyer.



#### **Choosing a lawyer**

Legal procedures are complex and involve various rules and systems presented in technical language. Many lawyers specialise in family law but the best ones exhibit a good grasp of the law and the legal system and know how to obtain the most advantageous outcomes for you and your children. Experience in drafting and negotiating various agreements that pass the scrutiny of family courts is also essential. This is why clients of Aaron Legal Solicitors generally have a smooth family law experience and are able to quickly rebuild their lives.



Charlotte Boyd *B.Nsg LL.B Dip Legal Practice*

Aaron Legal Solicitors

<http://aaronfamilylaw.com.au/>

Please contact **Pamela Holliday** - Aaron Legal on

0245 78 7344

0298 98 1826