

FAMILY LAW

Property and Financial Issues:

If you have children, their welfare will be a very important consideration in the financial settlement.

The first step to a fair settlement is to ensure we have a clear and accurate picture of the assets of each partner. This process is called disclosure. Both partners must make a full and frank disclosure of their financial position before negotiations can start.

Once we have all the details of the assets and agreed upon their values, we can then open negotiations to reach a settlement. Most cases are settled by negotiation between the couple and their lawyers. It is normal, however, to issue an application to court to resolve a financial dispute so that use can be made of the court procedure. Sometimes this is necessary to force the issue of disclosure or to establish a reasonable time frame for the process. Only a very few cases are actually resolved by a final hearing in front of a judge.

Court procedures

In matrimonial and de facto relationship property settlements, the court has the power to make a variety of orders:

- Periodical payments.
- The transfer of property.
- The payment of a lump sum.
- Splitting of superannuation interests

The law sets out the criteria, which must be taken into account when formulating financial settlements. There is no codified formula for the division of assets - it is a discretionary system. The courts must take into account, in respect of spouses and

de facto partners, your income and earning capacity, your assets and financial resources, your housing needs, the duration of the marriage or relationship, your overall contributions, your health and any other circumstances of the case. The court is required to assess and evaluate these criteria when considering the claims of each of the partners. Different courts work to slightly different time-tables, but generally you need to allow about a year to 18 months from the date when we make the first application to the final hearing.

Parenting arrangements

As a parent you will have to make difficult decisions about your children whilst you go through a divorce or separation.

It is often difficult to agree with your partner on the best way forward in relation to the welfare of the children. We approach this very important issue involving the children with sensitivity to ensure that the children benefit from any outcome.

Often the biggest issues facing parents who separate is the care of the children. If you and your partner cannot agree which of you your children should live with, or how often each of you should see the children, or how your responsibility should be exercised, then either parent may apply to the court for a decision. We suggest informal mediation and robust negotiation before initiating legal proceedings.

Sometimes a parent wants to take the children away from the State or country. The consent of the other parent is needed to do this. If this becomes an issue, the parents may need help from the courts. Sometimes there is good reason to fear that your child may be taken from you permanently to live elsewhere in Australia or abroad. If this is an issue we can apply to the court for an injunction to prevent this.

If you and your partner cannot agree about financial or other arrangements that affect your children, either of you can apply to the court to decide any issue about the children's care and wellbeing.

For further information please contact Arul Niles on 0414772709.