



AB

Allwright Bourke

LAWYERS & CONVEYANCING

Family Law - Property & Parenting Information Pack

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Offices in New South Wales

If you have separated from your partner, or you are thinking about separating, we understand that this is a very emotional and hard time.

We hope to make the process a bit easier. We will give you realistic advice. We will not just tell you what you want to hear. We will be honest and explain the process and your rights and obligations in plain English.

We settle matters as early as possible. Family law can be a stressful and an expensive journey if it is heavily litigated. We aim to avoid lengthy litigation. We have settled thousands of matters outside of Court.

We promote amicable separations, that are financially fair and child focused. We will not rush to Court, unless it is absolutely necessary. We understand that *"no one wins if there is a war"*.

Be kind. Think about the "big picture" and pick your battles. Remember to look after yourself. Get mental health support if you need it. You will be okay and we are here to help!

*"You may have lost me
as a friend, but that does
not mean you have
gained me as an enemy.
I still want to see you eat
- just not at my table" -
Tupac*

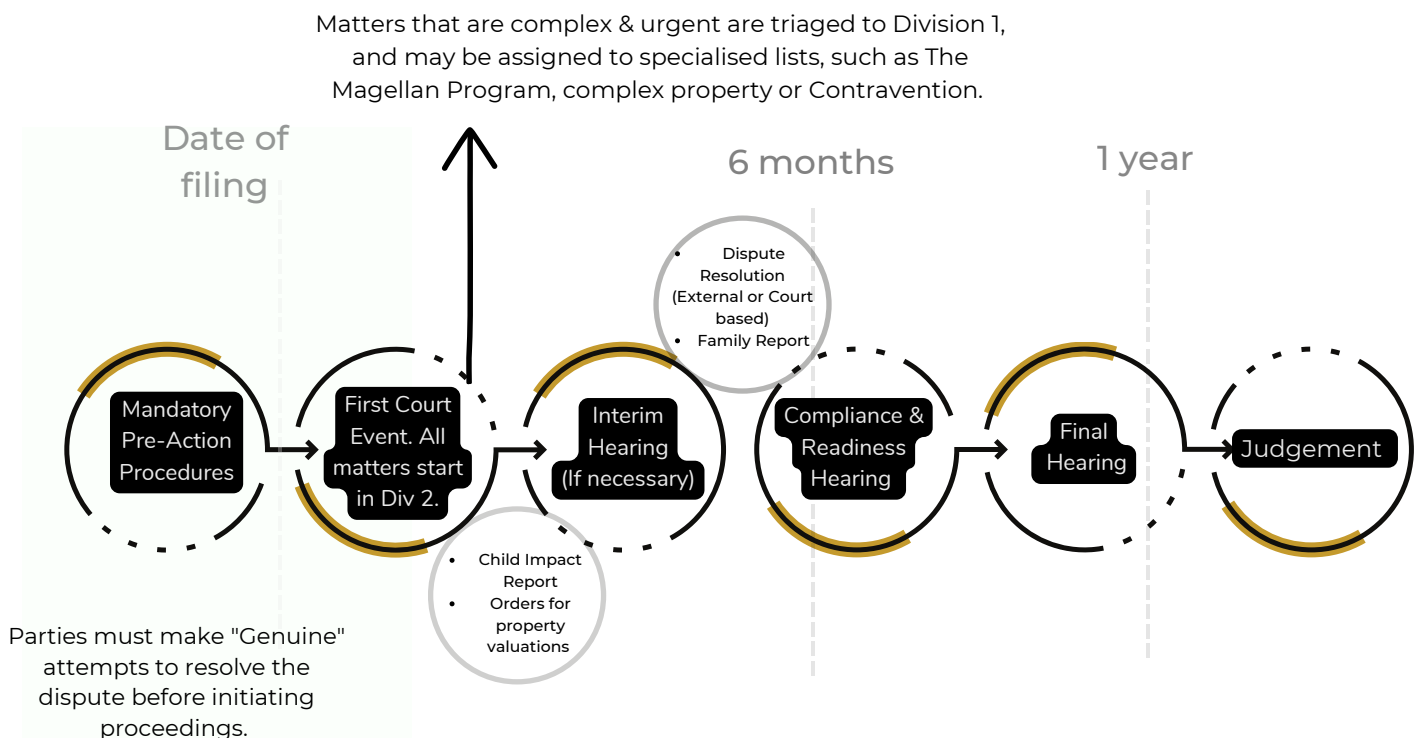


Federal Circuit & Family Court of Australia (FCFCOA)

If Court proceedings are necessary, the FCFCOA has a "pathway" to guide you through. The Court expects parties to mediate and make a genuine effort to resolve matters before matters will progress to a hearing.

The current Court pathway hopes to finalise matters in twelve (12) months. But delays, especially in regional Courts, are expected.

Depending on how busy the Court is, it may take 2-3 months to get a first list date and the wait list for a court funded Family Report is about 1 year. In our experience, if a matter runs to final hearing it may take about 2 years from the date you start proceedings.



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Family Violence

If you have been a victim of Family Violence, it is important the you tell us.

If you or your children are in danger- we need to know as soon as possible. We know this can be difficult and we are hear to listen, without judgement, and can then put measures in place to try and protect you or your children.

If you are a victim of domestic violence or if family violence has been present in the relationship, it will likely impact the way your matter is run or the outcomes. For example, if there has been domestic violence you may not:-

- be required to mediate with the other party
- be subjected to direct cross examination
- be expected to share parental responsibility or have contact with the other party

If you or your children are in immediate danger call 000. If your spouse is threatening, stalking or scaring you, contact the Police.

If you or your children have experienced trauma due to family violence, it is important that you all engage in counselling. Remember that you need to look after yourself and your children first.

It is also important that you document your experiences and if safe, keep evidence of any family violence.

We recommend you keep a detailed diary of incidents , save text messages or emails and that you receive and avoid phone calls or face to face contact without a witness - if your ex is dangerous or if there is high conflict.

Whilst Family Violence is a real concern, we also note that false allegations of violence occur for regularly for strategic purposes. We will not assist parties to make false claims and act with equal integrity for both mothers and fathers.

We do not take allegations of family violence lightly and false allegations can ruin lives. If you are falsely accused of family violence we are here to assist.



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What is the normal process and timeline?

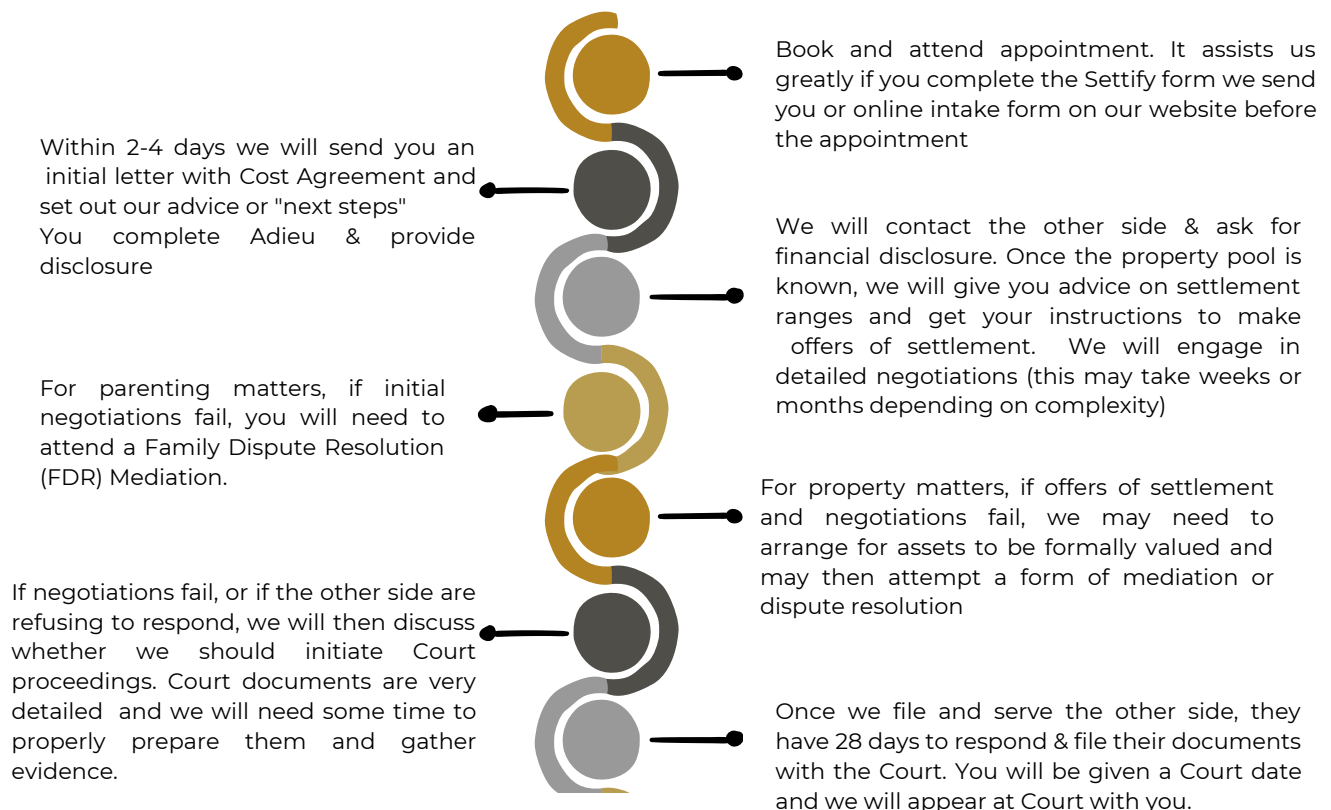
Each matter is different. Some matters will resolve quickly.

Other matters may be more complex and take longer. We know you want this done quickly and we will do it as fast as we can, but we must be thorough and how the other side acts or their delays are out of our control.

Delays often occur:-

- when there are risks or allegations that are disputed
- if the asset pool is very large or complex
- when the asset pool is not agreed and valuations need to be done on property
- when either party refuses to disclosure information or does not respond or engage in negotiations in a timely manner
- if one, or both parties, are not thinking of the "big picture" and arguing over every detail
- if one, or both parties, are not realistic in their expectations
- if mediation is required, as it may take some time to get a mediation date
- if Court proceedings are started, as matters can progress slowly because the Courts are very busy and the Dubbo & regional Courts do not sit every day.

Pathway for a matter that requires negotiation



Parenting Issues



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When children are involved - it is always about what is in their best interest. It is rarely about what is best for you or the other parent.

If you are able to agree on your parenting issues (with or without our assistance) then any agreement can be formalised by:-

- i. A Parenting Plan (which is not legally binding); or
- ii. Consent Orders (which is legally binding).

We will discuss which option best suits your matter. Consent Orders are the most common method.

If your parenting dispute can not be resolved by negotiations, we will assist you to arrange a dispute resolution opportunity, such as mediation, or help you through the Court process, if it becomes necessary.

We will only initiate Court proceedings if necessary or if there is urgency, such as immediate physical risk to a child.

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Best Interests of Children & how much time should they spend with both parents?

Each and every family and child is different and we (and the Court) will look at your family situation and carefully consider the needs for the child/ren, and any risks to them.

The Family Law Act 1975 (Cth) says that it is in a child's "best interests" to have a meaningful relationship with both parents unless there is a risk to the child, which cannot be avoided.

We will work with you to determine if it is in your child's best interests, and reasonably practical, for the child to spend:-

- i. equal time with both parents; or
- ii. if the children should live with one parent and spend "significant and substantial time" with the other parent.

If neither of these options are in the child's best interests, or reasonably practical, we will discuss other options with you, such as a parent having alternate weekend time or very limited time, if there are risks or if the parents live far apart.

In determining the "best interests" of a child, the primary consideration is :-

- the benefit to the child of having a meaningful relationship with both parents; and
- the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence

"Additional considerations" that we consider when determining the best interests of the child include, the views of the child, the maturity of the child, the involvement of the parents historically in raising the child, whether the child will cope if there was significant change, cultural issues and any other factors that are relevant to the child.

Co-parenting & Respect

Whilst it can be hard to co-parent with the other parent (especially when emotions are high), you must try. You should treat each other with respect.

Even if the other side are acting out, that does not mean it is okay for you to also act out.

Unless there is some real risk (such a family violence or substance abuse), you should both be involved in the child/ren's lives.

Withholding a child from the other parent, for no legitimate reason is not appropriate.

You need to communicate somehow. If emotions are high, keep communication brief, "businesslike" and in writing.

At the very least, you need to pass on key information for the child/ren and discuss key issues like schooling, major medical decisions, where the child lives or religious decisions.

If there are risks of family violence or an ADVO is in place, we will advise you on how you should communicate with the other parent.

Do not involve the children in the disagreement or talk badly about the other parent.

Never post on social media about the dispute.

The dispute is between you and the other parent, and great psychological harm is done if you involve the children. They are already hurting and love the other parent. Don't make them pick a side.





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Property Issues



How is property divided after a separation?

Generally, a four step approach is adopted to work out how property should be divided between you and your ex partner.



Step 1 - Identify & Value the Asset Pool

We must identify and value assets and liabilities the parties hold.

It does not matter whose name the assets are in. All assets you own in your name or joint names are part of the joint asset pool.

If values are not agreed, valuations will be required.

The global approach is the most common approach, where all property is listed in one asset pool. In limited circumstances, we might use a “two pool” method if we wish to treat superannuation separately. We may also use an “asset by asset approach”, if a party has contributed greatly to a particular asset(s) or, where assets or liabilities were acquired before the relationship commenced or post-separation.

We value the assets as at today's date and not the date of separation.

We will need a detailed timeline of when and how each asset was acquired and disposed of throughout the relationship.

Disposal of some assets may constitute an "add back" or notional property that should be included in the asset pool. Examples include:-

- where assets have been sold or given away and funds are not accounted for in the asset pool
- where a party has spent lavishly or wasted funds

We will also consider financial resources available to each party such as inheritances, employment entitlements, insurance & trusts.

Superannuation is included in the asset pool, even when a splitting order is not sought.

What assets & liabilities need to be included?



Cash, all bank accounts, term deposits



Vehicles - car, trailers, caravans, motorbikes



Your home, farm and investment properties & all mortgages



Insurance policies that have a defined benefit value



Superannuation



Stock, machinery, plant and equipment



Companies, businesses & interests in trusts



Furniture, jewellery & personal belongings of value



Funds held in Trust on your behalf e.g stock and station agent funds



Redundancies or Personal Injury/Compensation payouts



Personal Loans, Credit Cards, HECs debt, Lines of Credit



Tax Debts

Everything!

Please don't try to "hide" your assets or liabilities.
You must be forthcoming.

We will not act for you if we become aware that you are not disclosing all of your assets.

It is important that we have the "full picture" to be able to give you proper advice.

If you do not disclose an asset and it is later uncovered, any agreement reached may be null and void. So be honest. It is about being fair.

Full and Frank Disclosure

You are required to provide all information and disclose all your assets. You must provide any document or information in your possession or control.

To identify the asset pool, we ask that you provide us with a detailed list of all your assets and liabilities and statements or evidence for everything. We usually want 12 -24 months worth of statements.

We will also want tax returns, pay slips and financial statements for businesses and market appraisals for vehicles and real estate.

Providing disclosure can feel like an chore. It can be time consuming for you to collect all those documents and provide them to us.

But there is an easier way to provide disclosure!

We urge all clients to use **Adieu**.

Adieu is "one click" disclosure. We will send you a secure link to Adieu to your mobile and email. Adieu will ask you questions about your assets and ask for authority to access your accounts and information. You will be asked to log into your bank accounts and provide personal details.

Adieu will then go and collect all of your disclosure and provide it to us, in a collated and organised fashion. Adieu can do all of this in a matter of hours. It would otherwise take clients days or weeks to get us all their disclosure and can take us hours to collate, scan and save it all to our system. Adieu saves you, and us, a lot of time (and saves you money in legal fees). We promise that it is super easy. Even the most "tech challenged" clients can use this system.

If you want more information on Adieu - check out their website

<https://www.adieu.ai/1-click-disclosure-how/>

If you cannot use Adieu, then please email or provide documents to us on USB, to save time. Alternatively, you can drop them into the offices and we will scan them in and collate them.



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Step 2 - Assess the Contributions

Identify the contributions both financial and non-financial (directly and indirectly) that each party has made to the acquisition, improvement, and maintenance of each asset & to the relationship.

We carefully consider the contributions made by each party and how much weight should be attributed to each contribution. This is how we start to work out what percentage of the asset pool each party is entitled to.

Examples of Financial contributions:

- assets or equity pre -relationship
- income of both parties and how that income was applied
- insurance /compensation payout
- inheritances or windfalls
- gifts of assets / cash



Examples of Non-Financial contributions:

- renovations, gardening, landscaping done by parties or their families / friends
- unpaid work in family business / partnership
- Financial management of household or assets
- Homemaker duties
- Contributions to raising children & parenting

It may be argued that a party made a negative contribution if they wasted funds such as through gambling or financial mismanagement.

Allowances and adjustments may also be made in circumstances where there was family violence and such violence made it more difficult for a party to make their contribution.





Step 3- Determine Future Needs

We then consider the individuals, and their future needs, and whether further allowances are appropriate to adjust the percentage of the property pool that each party is entitled to.

Examples of some of the things we might consider include: -

- length of the relationship;
- financial resources available to parties;
- if either party has re-partnered, or are financially assisted by someone else;
- likely future incomes of each party and if there is a large income disparity;
- illnesses or impairments that may impact employment prospects/income;
- The age of the party and how their age may impact earning capacity, or ability to access superannuation/pension; and
- future needs of any children or dependents & child support commitments.



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Step 4 - Is the proposed division "just and equitable" to both parties?

Lastly, we must analyse the overall effect of any proposed division and whether it is truly fair to both parties. This is a holistic, reality testing phase.

A party might be entitled to a certain percentage of the asset pool when we just consider their contributions & future needs, but for them to receive that percentage, it may result in unacceptable inequality to the other party.

For example, a proposed division that would force the sale of a business, family farm or tools of trade, which would impact one party's ability to earn an income is generally not "just and equitable".

Similarly, if a proposal requires a party to take out a loan to payout the other party, this may also not be "just" in some circumstances.

This stage is about being fair.

Conclusion

As you can see, dividing property is not a simple math exercise. There is a lot of discretion based on your individual circumstances.

Once we have full instructions, and know all of the assets, we will give you advice on your entitlements and likely settlement ranges.

This will be professional and realistic advice. We will not give you inflated expectations, or simply seek what you want, if it is not realistic or ethical.

We have a duty to you, but also a duty to the Court, and to the Solicitor Rules.

We will conduct your matter in your best interests, but will not part from our ethical obligations to the Court.

We hope this guide has given you some information into a family law and how we run our family law matters.

