

June 2016

# You and family law

## A short guide

This booklet is for people who need information on family law



For more information  
watch our online videos:

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

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We can talk with you about what you need.

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**Disclaimer:** The material in this publication is a general guide only. It is not legal advice. If you need to, please get legal advice about your own particular situation.

## Changes to the law

The law changes all the time. To check for changes you can:

- call Victoria Legal Aid's Legal Help phone line on 1300 792 387
- visit Victoria Legal Aid's website at [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)
- contact a community legal centre. Call the Federation of Community Legal Centres on 9652 1500 to find your nearest community legal centre.

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# 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 separation or who have separated.

Family law covers all aspects of family relationships – breakdown, divorce, care of children, financial support of children and former partners, and property division. You will also find information here on ways to try to sort out your arrangements without having to go to court, and where to go for help.

## Legal words

To help you, we have explained some words in ‘What do these words mean?’ at the front of this booklet. 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 broke down. The law’s main concern is what is best for the children. Where possible, children should have a relationship with each parent and other important people in their lives.

In dividing property the law looks at everything the couple owns and earns, and then divides these according to what it considers fair. It is not about who is right and who is wrong. It is about making arrangements for the future.

## Victoria Legal Aid

Victoria Legal Aid is the biggest legal service in Victoria, providing legal information, education and advice for all Victorians.

Victoria Legal Aid can help people with legal problems about criminal matters, family breakdown, child protection, family violence, child support, immigration, social security, mental health, discrimination, guardianship and administration, tenancy and debt.

Victoria Legal Aid provides:

- free legal information through its website, Legal Help phone-line, community legal education, publications and other resources
- legal advice through the Legal Help phone-line and free clinics on specific legal issues
- minor assistance to help people negotiate, write letters, draft documents or prepare to represent themselves in court
- grants of legal aid to pay for legal representation by a lawyer in private practice or a VLA staff lawyer.

## Getting more help

Any relationship breakdown is stressful. It can be especially hard if there are children involved. You might also find it difficult to cope financially. Making decisions at this time is not easy, but there is help available. Getting legal advice and other support can help you understand what choices you have.

Talking to a lawyer does not mean you have to go to court, although lawyers can help you do this if you need to.

If possible, try to talk to your former partner about making arrangements for the future. If you can agree on a plan this can be better for everyone.

If you feel worried for your safety, intimidated, or feel that you cannot make decisions equally with your former partner you can get help.

You can get help to make an agreement from Victoria Legal Aid. Victoria Legal Aid clients and their families can be referred to Victoria Legal Aid's Family Dispute Resolution Service (FDRS) service or a lawyer may be able to help you. A Family Relationship Centre or other dispute resolution service can also help, but they cannot give you legal advice. These community services can also refer you for other kinds of help with your relationship with your former partner.

See 'Family violence' at page 10.

Interpreters can be arranged for legal advice, family dispute resolution or court.

### Contact Victoria Legal Aid:

To speak to a Legal Help Officer from our Legal Help service call 1300 792 387.

You can get more detailed information about family law from our website [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

Also see 'Where to get help' at page 27.

## What do these words mean?

**abduction** – taking a person away without their permission or the children without permission

**arbitration** – where an independent person (an arbitrator) considers what each person has to say then makes a 'binding' (legally enforceable) decision. Arbitration can only be used in property disputes

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

**caveat** – a warning to other people that you have an 'interest' in property, for example you may have rights to the property in some way

**consent orders** – an agreement between you and another person which is approved by the court and then made into a court order

**contributions to a marriage or relationship** – things you and your spouse or de facto partner have given to a marriage or relationship, such as property, earnings, house renovations or gardening, child care, cooking and cleaning

**court order** – a document made by the court which sets out things that must happen, for example where the children live or how property is to be divided when a couple separates

**de facto couple** – people who live together as if they were a married couple although they are not. This includes same sex couples

**debt** – a debt is money that is owed to another person or organisation such as a mortgage, loans or credit cards

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

**extended family** – other family members such as grandparents, aunts, uncles and cousins

**family dispute resolution** – when a family dispute resolution practitioner helps people in a family sort out their disagreements with each other, before or after separation. Sometimes this is called ‘mediation’

**family violence** – behaviour by a person towards a family member, or the family member’s property or an animal, that causes fear or concern for the family member’s personal wellbeing or safety. Also known as ‘domestic violence’

**family violence intervention order** – a court order made under Victorian state law to protect a family member by placing restrictions on the behaviour of another family member

**final order** – the final orders that the court makes in a court case. Once a final order is made, the case is over

**injunction** – a court order to stop someone from doing something, for example to stop property being sold or money being spent

**interim order** – a temporary order made by a court which lasts until another order or a final order is made

**lawyer** – a person who can advise you about the law and represent you in court

**negotiation** – the process where you and your ex-partner, or your lawyers, try to sort out an agreement on your behalf

**legally enforceable** – must be obeyed, by order of the court, for example a parenting or consent order

**location order** – a court order to find children who have been taken without permission or who cannot be found

**mediation** – where people meet with a trained mediator to discuss their differences and see if they can come to an agreement

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

**parenting order** – a court order about children, for example setting out where the children will live and when they will see each parent or other significant people

**property settlement** – how property will be divided between former partners. This is decided either by the people themselves, through their lawyers or when the court makes an order

**recovery order** – a court order to bring back children who have been taken or kept without permission

**relocate** – moving to another area, state or country

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

**witness** – a person who saw or heard something about your case (including yourself). They are called to give this evidence in court

# Separation and divorce

## What is separation?

**Separation** is when you stop living together as a couple, even if you are still living in the same house. You do not need to get permission or your partner's agreement. If you are new to Australia or are worried about your residency, get legal help.

## How do I get separated?

To get separated you do not have to apply to a court or government organisation, or fill in any forms. You will not get a certificate saying you are separated. You will need to:

- tell organisations such as Centrelink, the Department of Human Services (DHS) Child Support, and Medicare that you are separated
- make proper arrangements for any children involved, and tell your family and friends
- sort out your financial affairs – work out how debts and loans will be paid, what to do about any joint bank accounts, what your superannuation or insurance entitlements are and change your Will.

This will help if you need to prove that you are separated. Also get legal help.

See 'Dividing your property' at page 23.

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

It is your decision if you want to leave or maybe your partner has left you. If your partner has used violence or threats, you can get help to apply for a family violence intervention order at a Magistrates' Court. You can ask for an order that stops your former partner from living in the family home, or coming anywhere you live or work. Orders can also protect children.



Watch our online videos to help you deal with issues like settling your finances, sorting out what's best for your children and dividing your property.

Go to [www.legalaid.vic.gov.au/whenseparating](http://www.legalaid.vic.gov.au/whenseparating)

If you have a family violence intervention order against you and it says you must not be at your home, then you must leave. You must do what the order says. Get legal and other help.

See 'Family violence' at page 10.

## Do I lose my rights if I leave?

If you do leave the family home, you will not lose your rights to the house or your things. You may also be able to return at a later time. It is best to think about your and your children's safety first, and also get legal help.

## What should I take if I leave?

If you do need to leave your home urgently, it is best to take all your legal and financial papers with you, such as:

- birth and other certificates
- Wills
- passports
- visas
- bank and cheque books
- superannuation, tax and other financial papers
- personal things that you are worried about leaving behind
- things you may need for yourself and your children if they are going with you.

If you apply for a family violence intervention order, you can ask for the order to include that your personal property be returned to you.

## Can I take the children with me?

Yes, but remember that the law says children have a right to a relationship with each parent as long as they are safe. If the move will make it more difficult for the other parent to see the children, you need to try to get the other parent's agreement first. If possible, get legal advice, even if you have your former partner's agreement.

If you feel you or the children are at risk of being hurt, get help quickly. Call the police on 000. A domestic violence crisis service can also help you. Get legal help as soon as possible.

See 'Where to get help' at page 27.

### What is divorce?

**Divorce** is the official ending of your marriage. Your partner does not have to agree, and the law does not look at whose 'fault' it is. De facto couples do not have to get divorced as they were never married.

### Do I have to get a divorce?

No. However, if you or your former partner wants to remarry, you must be divorced.

You can make arrangements for children and property without being divorced. If possible try to make these arrangements soon after separation.

Tell organisations like Centrelink, banks, superannuation and insurance companies.

If you stay married this affects your rights and obligations, with finances and your Will.

See 'How do I get separated?' at page 6.

Get legal and financial help, particularly before signing an agreement. If you do get a divorce, you must apply to the court for a **property settlement** within a certain time. Different times may apply for some de facto relationships. Get legal advice.

See 'Dividing your property' at page 23.

### How do I get a divorce?

You can apply for a divorce at the Federal Circuit Court. You or your partner must be an Australian citizen or long term resident.

You can still apply for a divorce if you were married overseas, or if you do not know where your partner is, as long as you live in Australia. If you are concerned that your marriage might not be legal get legal help.

Contact the court for more information and a divorce kit, which has the forms that you need.

There is a fee for applying for a divorce.

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

Most people apply without using a **lawyer**. You can decide if you want a lawyer to help you. You may need legal help to sort out arrangements for children or property.

### When can I get a divorce?

Your marriage must have broken down, with no chance of you getting back together. You must be separated from your partner for at least 12 months and one day. If you were married for less than two years extra conditions apply.

You can be living in the same house, as long as you live separate lives. You may have to prove this.

### What if there are children of the marriage?

The court will want to make sure that proper arrangements have been made for the children, before allowing the divorce.

See 'Children' at page 18.

### What happens if we get back together?

You can become a couple again one time for up to three months without affecting the 12-month separation period.

### How long does it take?

It will usually take 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 any behaviour by a family member that causes another family member to be afraid. Family members include a spouse, partner (including same-sex partner), child, carer or someone considered a family member.

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', 'you are useless and stupid')
- physical violence (for example, hitting, pushing, 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', '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 are exposed to these behaviours. This might include comforting a family member or seeing the police arrive after family violence has happened.

No one has the right to hurt or threaten another person. These laws protect everyone who lives in Australia. If you are on a visa and there is family violence get legal help immediately.

Violent behaviour is against the law and you can take action to stop it. Help is available.

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

Take action to make sure you and your children are safe.

You can:

- call the police on 000
- call a domestic violence outreach service or other local community organisation
- get legal help
- apply for a **family violence intervention order**
- get support from family and friends.

See 'Where to get help' at page 27.

You can call the Women's Domestic Violence Crisis Service of Victoria (24 hours) on 1800 015 188.

## What is a family violence intervention order?

A family violence intervention order is a **court order** that stops a person from doing things like:

- hurting, harassing or threatening another person
- coming within a certain distance of another person, their home, school or their workplace
- damaging or threatening to damage another person's property
- getting someone else to do these things for them
- having a gun.

A person can also be ordered to return personal property. Anyone who lives in Victoria can apply for a family violence intervention order.

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

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

You can get help to apply for an order from a domestic violence outreach service, Victoria Legal Aid or a community legal centre.

You can also apply at the Magistrates' Court or the police may be able to help you. Police may be able to arrange 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 a competent interpreter if the family members involved do not understand enough English.

You can get information about family violence intervention orders from Victoria Legal Aid online at [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

## What happens at 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 arrange one. If you can, bring **witnesses** to support your story. The other person has a right to argue against any order being made.

The court will make an order if it is satisfied that you have experienced family violence and that you may be hurt. At first, an **interim order** may be made. The police will give a copy of this order to the other person. This lasts until the next court date, when a **final order** can be made.

The court can also make orders protecting children.

## What if the order is broken?

Breaking a family violence intervention order is against the law. If the other person breaks an order 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 the court can make these decisions. Either you or the other person can apply to the court to change or stop an order, for example, if you wish to get back together with your partner. You will have to convince the court that your situation has changed.

Get legal help.

## What if a family violence intervention order has been taken out against me?

If you have an intervention order:

- do not break the order, even if you do not agree with it. Read it carefully. For example, you may be able to stay in the home, but be ordered not to hurt or abuse the other person
- you must go to court – an order can be made even if you do not go
- get legal help. The effects of an order are serious
- get support, from family, friends or a support service.



For more information watch our online video **Dealing with family violence.**

Go to [www.legalaid.vic.gov.au/whenseparating](http://www.legalaid.vic.gov.au/whenseparating)

If you are a male concerned about family violence you can call the Men's Referral Service on 1300 766 491.

Victoria Legal Aid has information about responding to family violence intervention orders online at [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

## How do orders affect contact with the children?

If a family violence intervention order is made against a parent, they may still be able to have contact with their children. The family violence intervention order may allow them to see the children under a family law **parenting order**, or if the parents and court agree visits should happen.

The amount of time you spend with your children under a parenting order, can be changed by some family violence intervention orders. Get legal help to work out your options for sorting out how visits might work.

See 'Children' at page 18.

If you feel the children are at risk of physical or psychological harm from seeing or communicating with their other parent, get legal help and other support quickly.

## Family dispute resolution

### What is family dispute resolution?

**Family dispute resolution** means trying to come to an agreement about your family arrangements, rather than going to court. Often this is done informally in the community – using family or other people to try to sort out arrangements. The term 'dispute resolution' describes different ways people try to come to an agreement, including **negotiation**, **mediation** and **arbitration**.

The people who offer these services are independent professionals. They are trained to help people sort through their problems and try to reach agreement.

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

### When can I try family dispute resolution?

You can try 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?

If you want **court orders** about children (**parenting orders**), 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 get you to try family dispute resolution or arbitration.

You need to prove to the court that you have tried family dispute resolution, or that it is not suitable in your situation, for example, if there is family violence. You may need a certificate from the family dispute resolution service that says this.

You can also apply directly to the court without a certificate if there has been family violence, child abuse or in urgent situations. Get legal advice.

Going to family dispute resolution does not mean you have to come to an agreement. Do not feel forced into signing an agreement. You can still get legal help to make decisions. For example, you can get legal advice about what an agreement means before signing it.

### **If we make an agreement, must it be followed?**

You can make an agreement **legally enforceable** by asking the court to make it a **consent order**. Get legal advice on what the agreement means.

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 yourself. You do not need to go to court. If you already have parenting court orders, the parenting plan must be followed in the areas where it is different from the orders. An exception to this is family violence intervention orders, which must always be followed.

See 'Children' at page 18.

### **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 only take on cases involving family violence if certain conditions are met.

For example, there must be no family violence intervention order that stops each person being involved in dispute resolution or counselling. They may be able to do conciliation or family dispute resolution with each person in a separate room, building or over the phone.

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

Family dispute resolution cannot work unless each person involved agrees. If one person refuses to go, you may need the court to sort out your dispute. You will need to explain to the court that you have asked for family dispute resolution, but that 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 we try and it does not work out?**

If you have tried family dispute resolution and it has not worked, you then have the option of going to court.

If the other parent has applied to the court, you must be notified and you must go to court if you can. If you cannot go to court on a certain day, let the court know and get legal help.

Courts are not attached to 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 and then make a decision. For more information on what going to court means, contact Victoria Legal Aid and the courts.

### **What does family dispute resolution cost?**

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

### **How do I find out where family dispute resolution is offered?**

You can call Victoria Legal Aid's Legal Help service on 1300 792 387. You can be referred to a range of services.

You can also call the Family Relationship Advice line on 1800 050 321 or visit [www.familyrelationships.gov.au](http://www.familyrelationships.gov.au) to find a Family Relationship Centre or other dispute resolution service near you.



For more information watch our online video **Resolving disputes**.

Go to [www.legalaid.vic.gov.au/whenseparating](http://www.legalaid.vic.gov.au/whenseparating)

You can get more detailed information about children and family law at [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

# Children

## Does it make a difference if we were not married?

No. The **Family Law Act** applies to all children of all relationships.

## What is the best way to sort out arrangements for the children once we have separated?

If possible, try to come to an agreement with your former partner. If you can agree, then write this agreement down. This can form a '**parenting plan**'.

Victoria Legal Aid lawyers or the Victoria Legal Aid Family Dispute Resolution Service may be able to help. A Family Relationship Centre or other dispute resolution service can also help with parenting plans, but they cannot give you legal advice.

See 'Where to get help' at page 27.

## Can grandparents and other family be involved?

Extended family can play an important part in children's lives. Where it is in the children's best interests, grandparents and extended family can be included in family dispute resolution, parenting plans or court orders. Try to work it out with those involved. Get legal advice.

## What is a parenting plan?

A parenting plan is a written agreement, signed and dated by both parents, or 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

- how disagreements about parenting arrangements will be sorted out
- how those with parental responsibility will communicate with each other.

It is best to get legal help if you have children under 18 years.

## Do I need to go to court?

If you can agree, you do not need to go to court. If you want the agreement to be **legally enforceable** you can apply to the court for orders by agreement. These are called **consent orders**.

The family law system encourages people to try to agree, if they can. Family dispute resolution can be cheaper than going to court, and more flexible. You can still get legal help.

See 'Family dispute resolution' at page 15.

## What if there is no agreement?

If there is no agreement, you can apply to the court for a **parenting order**. You will have to go to family dispute resolution before you apply for a parenting order. There are some exceptions to this.

See 'Family dispute resolution' at page 15.

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 for the children. The court will decide what is in the children's best interests and will consider the children's views. You will have to go to a court hearing.

Parents (including same-sex parents), grandparents or anyone concerned about a child's welfare can negotiate parenting plans or apply for parenting orders.

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

The law says that parents have equal shared responsibility for their children unless the court orders otherwise. This does not mean that children have to spend equal amounts of time with each parent although the court must consider this.

Think about what arrangements are in the best interests of the children and what is reasonably practical. That may be equal time, substantial and significant time (which includes weekdays, weekends, holidays and special events) or some other amount of time.

It is best to think about the quality of care, providing a settled environment and working towards a plan where both parents feel satisfied that the children's needs are being met. Every child has different needs.



For more information watch our online videos **Telling your children, Getting help and advice and Planning for the future.**

Go to [www.legalaid.vic.gov.au/whenseparating](http://www.legalaid.vic.gov.au/whenseparating)

You can get more detailed information about children and family law at [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au).

## Who has to financially support the children?

Every parent has a financial duty to support their children. 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 a second family or families.

There are other factors which may affect your child support. It is important that you get legal advice about how the law might affect you. Same-sex parents can also apply for child support.

For more child support information:

- online: [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)
- publications: to order go to [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au) or call 9269 0234 and ask for Publications.

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

## 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 the parent. If the children refuse to visit, you still have a duty to encourage them as this is seen in their best interest.

If you believe that spending time with the other parent puts the children at serious risk of physical or psychological harm get legal help quickly. The police and other authorities may also need to be told.

## What if court orders for parenting time are not being followed?

If the order is for you to spend time or communicate with the children and the children are being stopped from doing this, then the order is being broken. You should get legal advice about what you can do. If the children live with you and the other parent does not turn up to spend time with the children, you cannot make the other parent do this.

Get legal help to make sure court orders are being followed, or if you want to change an order.

## What if the arrangements are not working?

Over time things change and arrangements may need to be worked out differently. It is best to talk about this with the other parent and try to sort it out. If there are court orders these will still apply, even if your situation has changed.

Get legal help. Victoria Legal Aid legal services or the Family Dispute Resolution Service may be able to help you work out a new arrangement. A Family Relationship

Centre or other dispute resolution service can also help, but they cannot give you legal advice.

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

Try to get written permission from the other parent. You may need this to apply for a passport for the children. Whether you get permission may depend on if you are simply travelling or planning to move (**relocate**). If you cannot get permission you may need to get a court order.

The law says children have a right to a relationship with both parents, and other important people in their lives. Moving a long distance away or interstate or overseas will affect these relationships.

If there are parenting orders, get legal help before doing anything that may break them. The court can make **location** and **recovery orders** to find and return children.

### What if children are not returned after seeing their other parent?

Even if there are no court orders you can still apply to the court to have the children returned. Even if there is an order that the children live with you, this does not mean the police automatically have the power to return them to you. You may need to get a court order to have them returned.

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

See 'Where to get help' at page 27.

You can get detailed information about children and family law on our website, visit [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

You can also call Victoria Legal Aid on 9269 0234 to order publications.

## Dividing your property

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

No. If you are a de facto (including same-sex) couple you can apply for a property settlement and/or spousal maintenance under the **Family Law Act**.

De facto couples can also register their relationships under Victorian law. Get legal help.

### Can we come to an agreement?

It is a good idea to try to come to an agreement about property if possible.

An agreement can be made into a court order (called **consent order**) which people must then follow. Agreements lodged with the court are more difficult to change (except by agreement). Even if both of you agree, the court will not make an order unless it is 'just and equitable', which means fair to both sides. The aim is to make orders that are final so that you do not have to come back to court.

### Who can help?

You can get a lawyer to help you negotiate with your former partner. Even if you do not use a lawyer to help with negotiations, it is important that you get legal advice before signing any agreement.

There are also **family dispute resolution services** that can help you sort out an agreement. A Family Relationship Centre may also be able to help if there are children involved as well as property, but they cannot give you legal advice.

A financial counsellor can help you with any financial difficulties.

See 'Where to get help' at page 27.

### When should I apply for a property settlement?

You can apply for a property settlement at any time after **separation**, but it is important to try to sort it out as soon as possible. Usually there will be debts to be sorted out, as well as assets to divide, so do not delay.

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

### What property am I entitled to?

There are many things that must be considered in deciding who gets what property, especially if children need support. It may not matter whose name is on the document (such as a home title) or who bought an item or made the **debt**. Even if you earn little or no money you can still have rights to property.

### What should the property settlement list?

The settlement should list:

- real estate, including the family home
- money held as cash or in bank accounts
- investments
- insurance policies
- inheritances
- shares
- superannuation
- jewellery
- any other assets
- any debts including mortgages, loans, credit cards and personal debts.

Property includes **assets** and liabilities owned individually, with another person or by a family trust or family company.

### How does the court decide who gets what?

Usually after separation it will be just and equitable (fair) that property is divided. The court expects that you and your former partner try to reach agreement about how to divide your property. The court must then decide if an order is needed to do justice and equity. Once satisfied that an order is needed, the court must consider whether the way the property is divided is fair and reasonable in all the circumstances.

There is a three-step process under the Family Law Act.

#### Step 1

Start by identifying and valuing all property of the relationship (including **debts**). This property can include things you got before or even after the relationship.

#### Step 2

Take into account what each person has given to the relationship (**contributions**) including earnings, savings, gifts, inheritances or property owned before the relationship, improvements to property, and contributions as a home-maker and parent.

#### Step 3

Consider the other factors set out in the law, including:

- how much money each person could earn in the future
- age and health of each person
- care and financial support of children
- responsibility for looking after other people
- the length of the relationship.

The law looks at all of these things in deciding what is a fair division. The law does not look at who left the relationship.

## What if I leave the house – do I lose my rights to property?

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

See ‘Separation and divorce’ on page 6.

## 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 have a **caveat** put on a property title. A caveat is a warning to other people that you have an interest in the property.

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

Act quickly and get legal help soon.



For more information watch our online video **Dividing property and money.**

Go to [www.legalaid.vic.gov.au/whenseparating](http://www.legalaid.vic.gov.au/whenseparating).

You can get detailed information about property and family law at [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

## Where to get help

### Victoria Legal Aid

#### Legal Help

For free information about the law and how we can help you, call Legal Help on 1300 792 387  
Monday to Friday, 8.45 am and 5.15 pm

#### More information

More information is on our website at [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

#### Do you need help calling us?



Translating and Interpreting Service

Tel: 131 450



National Relay Service

TTY users: Call 133 677

Speak and Listen users: Call 1300 555 727

Internet relay users: See [www.relayservice.gov.au](http://www.relayservice.gov.au)

#### Local offices

We have offices all over Victoria. Our offices are open Monday to Friday, 8.45 am to 5.15 pm.

See the back cover for office locations.

All offices are accessible to people with a 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 [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au) or call (03) 9269 0234 and ask for Publications.

### Victoria Legal Aid Family Dispute Resolution Service

You are always encouraged to try to sort out your family law dispute before, during or after you go to court. You may be able to use Victoria Legal Aid's confidential Family Dispute Resolution Service, where trained dispute resolution practitioners can help people reach their own agreements.

Further information is available from your lawyer or from Victoria Legal Aid's Legal Help service on 1300 792 387.

### Other legal services

#### Federation of Community Legal Centres

Call the federation to find a community legal centre in your local area that suits your needs. All centres offer legal information, and some specialise in particular areas of family law. Interpreters can be arranged.

Tel: (03) 9652 1500

#### Law Institute of Victoria Legal Referral Service

The Law Institute of Victoria offers the Legal Referral (telephone) Service for free. All law firms included in this service provide a 30-minute enquiry interview free of charge.

Tel: (03) 9607 9550

### Victorian Aboriginal Legal Service

Tel: (03) 9418 5999 or 1800 064 865 (toll free)

### Aboriginal Family Violence Prevention and Legal Service

Tel: (03) 9244 3333 or 1800 105 303 (toll free)

### Courts

#### Family Court / Federal Circuit Court of Australia

Tel: 1300 352 000 (24 hours)

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

#### Magistrates' Court of Victoria

Tel: 9628 7777 (Melbourne) or look in the white pages under Justice Department of Victoria for your local court.

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

### Government

#### Australian Federal Police

If a child has been abducted where there is a parenting order call the Australian Federal Police.

Tel: 13 14 44 or visit your local police station.

#### Centrelink

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

#### Department of Human Services (DHS) Child Support

Tel: 13 12 72

#### Department of Human Services Child Protection

Tel: 13 12 78

#### Police (emergency)

Tel: 000

#### Registry of Births, Deaths and Marriages

Tel: 1300 369 367

## Family violence services

Women's Domestic Violence Crisis Service (24 hrs)

Tel: 1800 015 188

Domestic Violence Resource Centre Victoria

Tel: (03) 9486 9866

In Touch Multicultural Centre Against Family Violence

Tel: (03) 9413 6500 or 1800 755 988

Men's Referral Service

Tel: 1300 766 491

## Family relationships and support services

Australian Parenting and Relationship Helpline

Call to find your nearest service.

Tel: 1300 365 859

Family Relationship Advice Line

For locations of Family Relationship Centres and other dispute resolution services.

Tel: 1800 050 321

## Useful Victoria Legal Aid resources

Visit [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au) to order or download or call 9269 0234 and ask for Publications to find out more.

### When Separating

These videos offer practical information to help you deal with issues like settling your finances, and sorting out what's best for your children. Some videos have information about what to do if you or your children's safety is at risk. Each video also has information about where to go if you need more help.

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



### Child support & parentage testing

Child support, Family Tax Benefit and your child care levels  
Organising child support and care arrangements for your children



### Family violence intervention order publications

How to respond to a family violence intervention order (booklet)  
Safe at home: how to get a family violence intervention order (booklet)

Watch me on YouTube

Watch our community legal education videos.

# You and family law

## A short guide



→ Scan the QR code to watch videos offering practical information to help you deal with issues like settling your finances, and sorting out what's best for your children.

### Victoria Legal Aid

For help with legal problems, call Legal Help on **1300 792 387**

For business queries, call **(03) 9269 0234**

#### Offices

Melbourne

#### Suburban offices

Broadmeadows

Dandenong

Frankston

Ringwood

Sunshine

#### Regional offices

Bairnsdale

Ballarat

Bendigo

Geelong

Horsham

Morwell

Shepparton

Warrnambool

### Publication orders

To download or order our publications in English or other languages go to [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

If you need help ordering online please call (03) 9269 0234 and ask for Publications or email [cle@vla.vic.gov.au](mailto:cle@vla.vic.gov.au)