

WHEN IT'S OVER, IT'S OVER

What do I do now?



I'M LEAVING

First off, take a deep breath

Leaving a relationship is hard. Staying can be harder. If your relationship has fallen apart the first step is to think as rationally as possible. Imagine what you want tomorrow to look like, then consider the following:

- Think seriously about whether or not to leave a relationship.
- If you intend to leave, consider how you will do it – what will you take with you? What will happen to your children? What access do you have to money to support yourself?
- Would your separation go more smoothly if you slowed things down? If you can keep the lines of communication open with your partner you have a much better chance of separating amicably and avoiding drawn-out and expensive legal proceedings.
- Think about who is going to go, and when – throwing your partner out cold could start all kinds of fires that will be hard to douse down the track when you need to work together. On the other hand, storming out unprepared could leave you struggling to get back to your house, your belongings, or your kids.
- But always stay safe. If you fear abuse or violence, there are resources available to help. And remember not all abuse is physical violence – abuse can also be psychological or financial.
- If you leave, before you do, make sure you have copies of all your important documents, as well as photos of valuable assets such as artwork and furniture. Take photos of the house and garden to show what condition it was in when you left.
- When you leave, take any things that are important or significant to you – you may never see them again otherwise.
- Remember, every case is different – what happened in your sister's divorce or your workmate's separation, is unlikely to be the same for you.
- You do not have to leave your home to separate from your partner. It is enough to say that you believe the relationship is over and that there is no prospect you will get back together.
- Consider talking to a lawyer. Not all lawyers are adversarial and getting advice is not a declaration of war. Even if you end up resolving your breakup without hiring a lawyer to help with the process, it can help in the early stages to give you an idea of what's ahead. The right lawyer can help you navigate a non-adversarial path and prioritise your needs and goals for the future.



Now think about logistics

Whether yours is a marriage or de facto relationship, once you have made the decision to separate – but before you actually do – you should plan your course of action.

You will need to work out where you will go and when, with whom and with what – will you take the kids? What about the dog? Do you fear a violent response? Can you take the company car? Does your departure create any legal implications?

It is important to get proper advice on these issues before you go – your actions now may have unforeseen consequences that could cause problems in the future. If you are unsure, get help – from government agencies or counselling services. They are all online and many are free or low cost.

Gather your information

When you separate, make sure you have access to the information and documentation that may be useful to help resolve issues down the track. This information can be invaluable evidence if things can't be resolved sensibly.

For example, if you end up disagreeing over property, you will need to have access to information that might help a court determine, or at the very least help you negotiate:

- What are your assets and liabilities?
- Who made what contribution to those assets and liabilities during your relationship and before you got together?
- What are your employment arrangements?
- Do either of you (or your children) have significant health issues? What are the care arrangements for your children?
- Do you know how to access information online? Do you have user names and passwords for bank accounts? Superannuation funds? Health insurance? If you don't pay these or regularly access them and your partner may change the passwords or details, if you can, take screen shots of the balances and things such as membership numbers and store them on your phone.

You also need to retain your privacy, so you'll need to change your passwords on all of your online accounts. The main ones are:

- email
- social media
- banking



Be clear and methodical

Think about all the information that might be available to you before you separate. Make a list of all the assets in the home. If possible, take dated photographs of each room. Take photos of paintings, jewellery, antiques and any other precious items you may have. This will help demonstrate that the particular assets existed at that date. Take photos of the inside of properties and gardens to prove the condition they were in when you separated. You might be surprised how quickly people's recollections change about how well (or badly) properties have been maintained.

Copy or scan as many documents as you can including;

- mortgage, lease or loan contracts
- bank and credit card statements
- cheque and receipt book butts
- letters from business associates, financiers, banks, accountants or lawyers
- receipts for major items such as school fees, travel, furniture, electronics, building work
- insurance, pay slips and information on superannuation
- shareholding portfolios and property investments.

If you can't copy or scan documents, take a bank deposit form or a cheque to identify the bank and the branch where the accounts are held. Take photos with your phone and store them in a folder that is easy to access.

If you are in doubt about the relevance of any information you find, take a picture or copy it anyway. Better to have too much than too little.

Consider having images taken of computer hard drives (especially where computer information is passworded). Search the internet for companies that do this for a reasonable fee. Having a copy of information held on computers may save you thousands of dollars in search costs and legal fees later on.

If you have physical copies of documents, take them to a safe place or give them to a trusted friend - don't leave them at home. This includes:

- Passports (yours and the childrens)
- Birth certificates (yours and the childrens)
- Marriage certificate



Secure yourself

This means physically and financially – if you are staying in the family home and your partner is leaving, you should secure your home, both for peace of mind and as an asset. You can lodge a caveat over the property relatively easily – your lawyer can help. That simply means that neither of you can borrow against the property, transfer ownership, give it away or take other securities against it.

You can also change the locks – but bear in mind how this might effect ongoing relations with your ex. If you are not at risk from your former partner, changing the locks can be like a red rag to a bull. Think carefully about whether there is a less aggressive path and try to negotiate access to the house.

Finance and wills

At the same time, don't underestimate how people react to relationship breakdown. Sometimes an automatic reaction to separation is for one of the parties to draw down on the mortgage, or spend up big on a joint credit card.

You should contact the bank, explain that you have separated and tell them what is not to happen on your accounts. You could also discuss arrangements for each of you to have access to independent funds until any property settlement is resolved.

You need to update your will, along with the beneficiaries on any superannuation and life insurance policies. This one doesn't have to be first on your list, but it is important not to forget and needs to be done sooner rather than later.

- Freeze mortgage balances
- Freeze draw-down facilities
- Freeze joint credit cards
- Update your will
- Update beneficiaries

LOOK AHEAD

Gathering information is vital and if things turn really nasty taking some of the above precautions will almost certainly save you considerable legal and accounting fees. It can be hugely expensive to get details of assets if your ex-partner decides to be uncooperative. The more information you have the easier it will be. It can also help to negotiate a settlement much earlier if you have all the facts – and settlement is always going to be better for everyone.

How you act now can have an enormous impact on how your relationship breakdown unfolds.

You should try as hard as you can to keep things as unconflicted and as seamless as possible. Keeping your matter out of the courts means you save you a fortune – hundreds of thousands of dollars in some particularly acrimonious cases – but also that your matter is likely to be resolved much more quickly and at minimal emotional cost.

That means you and your family get to move on, start again and leave all the stress of separation and legal fees behind. It also puts you in the best position to successfully coparent your children with your ex.

If you can negotiate your relationship breakdown with your former partner you will have much more control over the process and the outcome. You don't have to leave decisions about your future up to someone else, you can resolve what matters to you, in private, in a way that fulfils your future goals and needs, and those of your extended family.

Consider your advice

Everyone knows someone who is separated or getting a divorce. It is a fact of life in Australia today. You are not alone in this but every case is different in family law. No two situations are the same.

Family and friends are there to support and help you - and often feel competent to advise you on what you should or shouldn't do.

But what happened to your sister-in-law who was left by her husband five years ago and who had to fight tooth and nail to gain custody of the children, may not be relevant to your situation. The fact that your best friend got 65 per cent of the property when her marriage broke down doesn't mean that you will.

Your family and friends can provide emotional support but they are unlikely to be able to contribute much information of real value about family law and how it works, so be careful about acting on their advice on legal issues. It may well be inaccurate and cause more problems than are solved.



The breakdown of a relationship of any sort is usually pretty emotional. Any good family lawyer should be able to give you competent advice on the law and how it applies to your particular situation. You do have a legal problem to resolve and that will be resolved faster (and at less cost) if you focus on the facts of the matter and look to your future rather than getting stuck on past blame.

But family law is different to other legal matters. It is personal, it is emotional and very few people who find themselves embroiled in a family law matter want to be there.

Collaborative practice

There is a way to resolve your relationship breakdown that looks at the bigger picture of your family situation beyond just the legal facts.

Collaborative law is an approach that uses the skills of lawyers alongside allied professionals – such as independent financial advisors, counsellors, or family and child psychs – to create an environment where you have the best opportunity to solve your problems with the help of a team of professionals.

This creates value for you as a client beyond what most traditional legal processes are able to do. Collaborative law focuses on the family problem as much as the individual problem and solves issues that are problems for both parties. It means you and your former partner can move through the process together and work towards common goals – both legal and non-legal.

It also means things that are not legally relevant – and would not be considered in a traditional family law model – can be considered throughout your negotiation. If it matters to you, it matters to the process and should be resolved along with your legal matters.

You are completely in control of the process, it can go as fast or as slow as you need. Any decisions about your future rest with you – they aren't at the whim of the court or in the hands of a judge who doesn't know you, your children or your former partner.

Bright Side lawyers are trained collaborative practitioners, and nationally accredited mediators. We know traditional family law but we also know there is a better way to do it and that means a much better outcome for you.

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