

Family Law Factsheet No. 5 The Court Process



This factsheet outlines the court process following a separation.

Financial arrangements after separation

It is important to consider what financial arrangements will be in place after separation. This includes:

1. property settlement - how assets and liabilities should be divided
2. spouse maintenance - whether one party is in need of financial support, and the other party has capacity to pay, and
3. child support - how the children will be financially supported.

Agreements

After separation, agreement may be reached privately or through a mediation process.

Any agreement reached may be outlined in:

1. consent orders; and/or
2. financial agreements (in relation to property and/or spouse maintenance); and/or
3. child support agreements (in relation to the support of the children).

Most cases should resolve without the need for any further intervention. However, in the event agreement cannot be reached by consent, an application to the Federal Circuit Court or the Family Court may be made.

The court process

The court process can be summarised as follows:

1. An application to commence court proceedings requires the following documents to be filed in either the Federal Circuit Court or the Family Court:
 - a. initiating application, which sets out the orders sought both on an interim (temporary) and on a final basis
 - b. affidavit setting out the evidence relied upon in support of the orders sought
 - c. financial statement which includes income, expenses, assets and liabilities.

If you have any safety concerns, do not disclose your address, telephone number or other contact details.

2. Once your application has been filed, and allocated a listing date before the court, it will need to be personally served on your former partner, or his/her lawyer if they are represented.

3. After being served, and prior to the first court date, your former partner will need to file his/her responding documents, including a response, affidavit and financial statement.
4. At all stages through the process, the parties should continue to try and resolve the matter without the need for the court to make a decision.
5. At the first court event, you would usually be required to appear in person (unless the court hearing is proceeding by way of telephone or video link).
6. If you have any safety concerns, you can discuss those concerns with:
 - a. the court, by contacting the National Enquiry Centre on 1300 352 000 and requesting a Safety Plan
 - b. your lawyer, or
 - c. the Family Advocacy and Support Service

<https://familyviolencelaw.gov.au/fass/>.
7. Safety arrangements may include having:
 - a. a safe room within the court allocated
 - b. security guards allocated to you
 - c. a support person present – at the Family Law Courts, there are family violence support workers who can also provide support to you and make appropriate referrals to other agencies.

10. At the first court event, the Judge may make orders requiring you to engage in a:

- a. conciliation conference - a mediation at the court; or
- b. private mediation.

Further information about the first court event can be found on the Federal Courts' website:

www.federalcircuitcourt.gov.au.

11. If the matter does not resolve through direct negotiations, or mediation, the matter will be listed for a final hearing.

Given the current court delays, the matter may not be listed for final hearing until three to four years after the initiating application is filed. It is therefore in the interests of all parties to try and resolve matters as quickly as possible.

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This factsheet is not a substitute for legal advice. If you have a problem please seek legal advice from your local community legal centre.