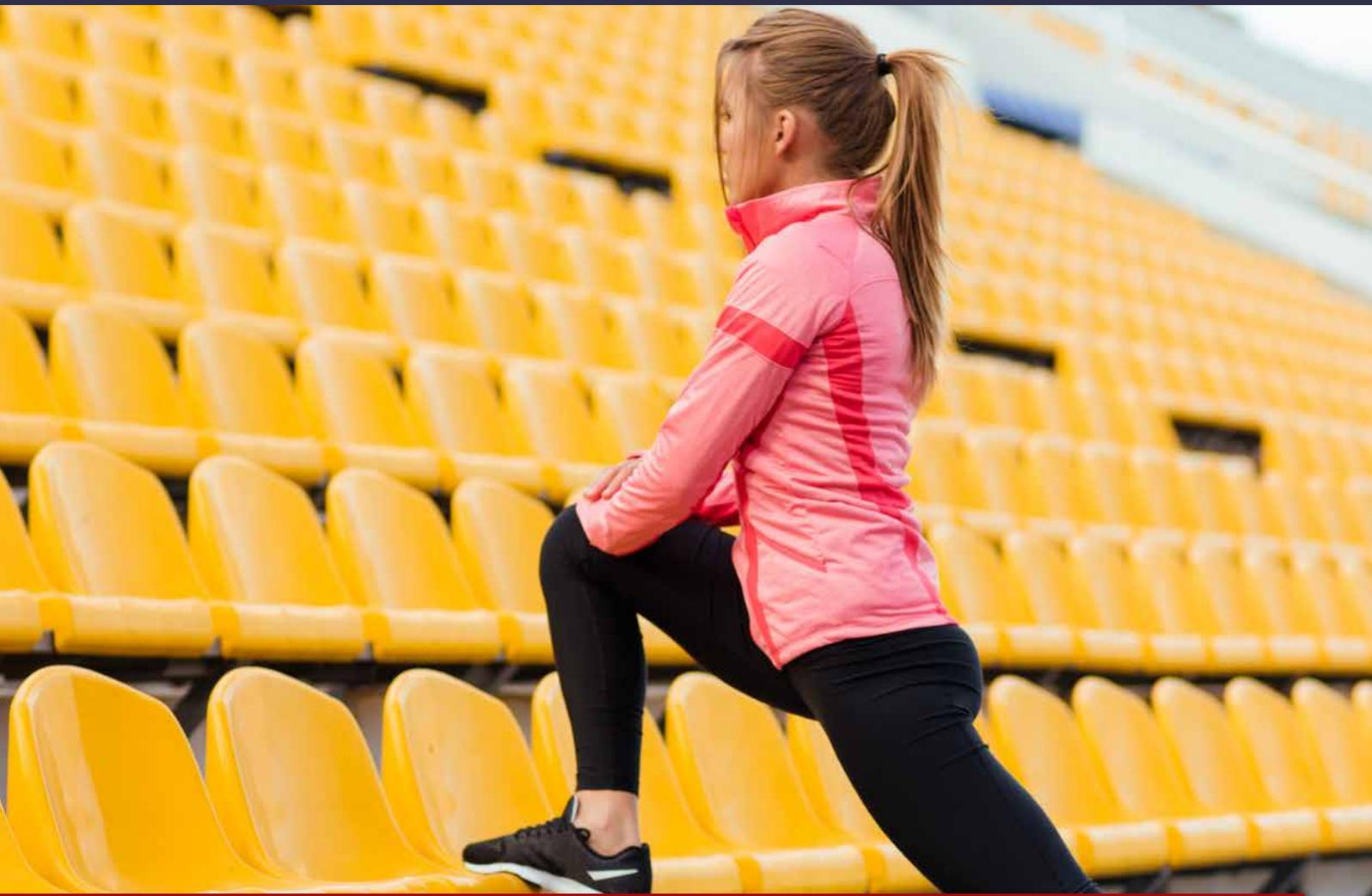


**HarrisLieberman**  
solicitors

10 THINGS YOU SHOULD KNOW  
**BEFORE YOU SEPARATE**



FAMILY LAW  
**SEPARATION**

commitment to make a difference

# 10 THINGS YOU NEED TO KNOW BEFORE YOU SEPARATE

## 1. Know what your assets, superannuation entitlements and liabilities (debts) are.

One of the first things your family lawyer will want to know when giving you advice about your family law matter is: what is the pool of assets? Documents such as bank statements, superannuation statements and taxation returns and notices of assessment are useful in identifying the net value of the asset pool (ie. assets less debts) to be divided between you and your spouse. Make copies of these important documents including bank statements, mortgage statements, loan statements, share statements, superannuation statements and tax returns (individual and for other entities such as companies, trusts and partnerships). Tax returns can be a useful documents for finding out in which companies shares are held and what income has been earned.

In family law matters, both parties are expected to exchange documents which outline their financial circumstances so gathering these sorts of documents early will give you a head start and will also help in identifying what other documents might be needed.

## 2. Know what your contributions are.

In family law matters, each party's contributions (including financial contributions such as the ownership of property at the start of a relationship and non-financial contributions such as homemaker and parental contributions) are evaluated and compared. This is an important part of working out how property should be divided between spouses when doing a family law property settlement.

**Make copies of any document which shows what you brought into the relationship including:**

- » Superannuation statements from the commencement of your relationship. Superannuation statements are usually only sent out every six months so the superannuation statement for the six month period closest to the date on which you and your spouse started living together should suffice.
- » Mortgage statements from the date of cohabitation if you owned a property and any evidence of the value of the property at that time such as market appraisals or valuations of the property. A copy of the contract for sale, or correspondence from your conveyancer/solicitor when you purchased the property will also be useful.
- » Documents evidencing any inheritance, redundancy or compensation payments received. For example, in the case of an inheritance, try to obtain copies of correspondence from the lawyer who handled the Estate which refers to the distribution to you. A copy of the bank statement showing the deposit of the amount received should also be obtained.

### 3. Know what happened and when.

Write a chronology. This, together with the documents you have gathered, will help your solicitor advise you about your range of entitlements under the **Family Law Act 1975**.

### 4. Use a family lawyer.

Use a family lawyer to get advice about the family law process and what a property settlement might look like in your individual case. If you have them, take copies of the documents outlined about together with your chronology to your first appointment with your family lawyer. The advice that you receive will be confidential.

### 5. Know the difference between a divorce and a property settlement.

Divorce is separate to a property settlement. The divorce is the formal dissolution of your marriage. Getting a divorce means that you can remarry. Be aware however that once a divorce order has been made, there are time limits which are imposed on application for a property orders under the **Family Law Act** (see 6 below).

A property settlement relates to the division of your assets, liabilities and superannuation under the **Family Law Act**.

### 6. Know your time limits

You can apply for property orders under the **Family Law Act** as soon as you separate ie there is no waiting time required. This is the case whether you were in a de facto relationship or married.

The earliest you can apply for a divorce however, is 12 months and one day from the date of separation.

Once a divorce order has been granted, you have only 12 months in which to make an application for property orders under the **Family Law Act** unless the court allows an application to be filed out of time. If you were in a de facto relationship, you have 2 years from the date of separation to apply for property orders under the **Family Law Act**. Please note that the Court will only allow an application to be filed out of time in special circumstances. You should get urgent advice from your family lawyer if you have been separated for more than 2 years (in the case of a de facto relationship) or you were divorced more than 12 months ago and there has not been a formal division of property.

### 7. Consider what parenting arrangements might be appropriate

Think about what parenting arrangements might be appropriate for your children having regard to the age(s) of your child(ren), their developmental needs, relationships with both parents and each parent's capacity to provide for the needs of your child(ren). Under the

Family Law Act, when the Court is considering what parenting orders should be made, the Court must consider the best interests of the child(ren) as the paramount consideration. Section 60CC of the Family law Act sets out a number of factors that a taken into account when determining what is in a child's best interests.

You and your spouse may benefit from attending mediation to discuss future parenting arrangements for the children. The Family Law Act imposes an obligation on parties to attempt mediation before making an application for parenting orders except in certain circumstances such as where there is family violence or where an urgent application for parenting orders is made.

## **8. Centrelink and Child Support**

Find out what your Centrelink entitlements will be if you separate (see [www.centrelink.gov.au](http://www.centrelink.gov.au)).

Find out what child support you might receive or have to pay (see <https://www.humanservices.gov.au/customer/dhs/child-support>).

## **9. Your Will**

Know where your Will is and what it says. You will need to consider changing your Will. If you are divorced and your former spouse is still named as a beneficiary under your Will, the Will will be invalid to the extent that it refers to your former spouse. Please note that this does not apply if you and your spouse are separated but not divorced.

## **10. Superannuation and insurance**

Know who your beneficiaries are on any superannuation policy or other insurance policy as that may also need to be changed.



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