

# 5 TOP TIPS FROM A FAMILY LAWYER



**1. Recognise the reality of how painful separation is and get help from a family therapist or counsellor if you are struggling with your emotions.**

The social scientists tell us that separation is second only in trauma to the death of a child. When people are suffering emotionally after a separation, they are not often rational and reasonable. It is hard to process complex information and make good choices for the future when you are scared, angry, crushed, hurt or vengeful. It is best to address these issues before you try to negotiate with your spouse so that you are in the best head space to navigate the complexities of planning for your future and reaching agreements that work best for you and your children.

**2. Keep the children out of the dispute. Respect and promote the relationship between the children and both parents.**

The Family Law Act confirms that the children have the right to know and be cared for, and to have a meaningful relationship with both parents, and others who have played an important role in their lives. There are exceptions such as where family violence is a significant feature but as a general rule the Court would promote relationships and have regard to the principal that the children's best interests are the most important consideration.

We know that separation and or divorce is not the main cause of damage to children. Being exposed to conflict is a major indicator that children will suffer emotionally and often physically and developmentally. It is inappropriate to expose the children to the dispute between the parents. Ideally, parents should try to work together to support their children going through the trauma for the breakdown of the relationship and work out arrangements that best promote the interests of the children. If there is doubt about the developmental needs of the children, there are family relationship counsellors who can assist parents to work out a suitable parenting plan. Flexibility in the parenting plan is also ideal. If parents rigidly adhere to a plan, children may miss out on important events.

**3. Don't air the dispute on social media**

Publishing information on social media, garnering support from followers who are critical of your spouse may feel like a comfort, but it can come back to bite you! If you have children, that information and publication may come to their attention – this is never a good thing. You should never publish anything you would not want to have a Judge subsequently read! It may damage your credibility, and your case.

**4. Educate yourself about all the options for dispute resolution. Avoid Court other than as a last resort.**

There are many processes you can use to resolve a dispute. The type of process chosen often dictates the outcome you can achieve.

- **Direct Negotiation**: Trying a direct approach and reaching agreement by direct negotiation is obviously the cheapest and most respectful way of approaching the matter, and then only having to pay a lawyer to record your agreement in a binding way will save you a lot of money.
- **Mediation**: Not everyone can do that so Mediation is the next cheapest option. Employing a Collaborative Lawyer and conducting your negotiations in a Collaborative process is the only process where you can control the type of lawyer your spouse engages, and ensures you both have lawyers working to assist you to negotiate in a non-adversarial way, and where they are only engaged for settlement purposes. This changes the dynamic of the negotiation and representation by lawyers, and because this process was specifically designed for Family law matters, it is tailor made to be respectful of parties who wish to have as amicable an outcome as possible, but who need support and guidance to achieve that.
- **Lawyer Negotiation**: If all else fails lawyers can try and negotiate with your spouse in writing, or deal with the lawyer for your spouse in lawyer negotiation. This can be expensive and if your spouse chooses a lawyer who is very litigious, it can be difficult to have the other side pay attention to your interests and make sensible and economically sound compromises.
- **Court**: The last resort is Court. There are no guarantees a Judge will give the outcome you think is fair and no lawyer can guarantee an outcome. It is a costly and slow process and should only be chosen if less invasive, less expensive options don't work or are unsuitable to your particular circumstances.

**5. Be realistic and willing to make concession. No-one is better off financially after a separation and unless a settlement offer has something for the other party as well as you, they are unlikely to consider it.**

Even if you went to Court and got everything you want – your best outcome – it won't be your actual best outcome as it will have cost you a lot of money and potentially destroyed or impacted negatively on your ability to have a good co-parenting relationship.

Parties living in 2 households cannot live the same life they did when 2 incomes were funding one household. Therefore both parties will need to consider making compromises in relation to their expectations and be willing to offer trades for what is most important to them. The alternative to settlement is an expensive battle so the sooner parties are willing to consider the needs and interests of the other party as well as their own and put offers that give something the other party is willing to accept, the more likely they can find peace and move forward with the dispute settled.