

Frequently Asked Questions

1. I have decided to separate, what next?

We recommend you record the date you separated from your spouse. This date is important for your Application for Divorce (if applicable) and time limits to commence property settlement proceedings with the Court.

We also recommend you collate as much financial information as possible and maintain a diary of significant events (financial such as property matters and non-financial such as children and parenting matters).

2. Do I need a Family and Divorce Lawyer?

We recognise that this may be a very stressful time in your life and our Family and Divorce Lawyers are well equipped to provide you with constructive guidance. We recommend that you have the benefit of meeting with one of our Family and Divorce Lawyers for at least a one-off consultation. By meeting with one of our Family and Divorce Lawyers you will be provided with practical advice to help you navigate your way through your legal issues.

When you are faced with a complicated Family Law matter such as Divorce or property settlement, seeking legal counsel is strongly recommended to handle all the legal aspects. Working with a Family and Divorce Lawyer will help to resolve the matter instead of going through the lengthy and expensive process of Family Court proceedings.

Engaging a Family and Divorce Lawyer can assist you to resolve disputes regarding family issues, understand your legal rights and obligations, handle any matters relating to your children, provide you with guidance in relation to any financial issues as well as protecting your interests throughout the process.

3. What are the benefits of using Kim Wilson & Co over another Family Law Firm?

Our Family and Divorce Law team have an Unwavering Adherence to Ethics, Professionalism and Confidentiality.

We have been operating in the area of Family Law since 9 March 1998. Kim Wilson SC was appointed Senior Counsel in 2001 and represents clients in the Family Court of Western Australia.

We have seven Accredited Family Law Specialists and three Nationally Accredited Mediators (AIFLAM). Kim Wilson SC is a qualified Arbitrator.

The firm is rated by Doyles Guide as one of the leading Family & Divorce Law Firms – Australia 2018 and First Tier Family & Divorce Law Firms – Western Australia 2017.

All of our Directors are Accredited Family Law Specialist. Kim Wilson SC is rated by Doyles Guide as a recommended Leading Family Law Senior Counsel Australia 2018 as well as one of the Preeminent Family Law Barristers in Western Australia 2017. Paula Wilkinson is rated by Doyles Guide as a recommended leading Family and Divorce Lawyer Australia 2018 and as one of Perth's Preeminent Family & Divorce Lawyers - Western Australia (Doyle's Guide 2016 and 2017). Linda Richardson is

rated by Doyle's Guide as one of the Preeminent Family & Divorce Lawyers - Western Australia, 2017 and Leading Family & Divorce Lawyer – Western Australia, 2016.

At Kim Wilson & Co we are committed to providing exceptional legal services in a professional manner. We have excellent working relationships with our clients and aim to provide you with efficient, timely and cost effective advice.

Our Family and Divorce Law team at Kim Wilson & Co are friendly, approachable and available to assist you with your individual Family Law circumstances. Kim Wilson SC is the only in house Senior Counsel and is available to represent you in resolving complex commercial Family Law matters. Our Family and Divorce Law team can retain Kim Wilson SC to provide advice and guidance in relation to your matter if and when required.

We understand that you wish to resolve matters as quickly and inexpensively as possible and we aim to achieve this by using primary dispute resolution methods. We can assure you of strong representation in the Family Court.

To book you confidential Family Law consultation call (08) 6380 3900

4. What is a Divorce?

Divorce is the legal ending of a marriage.

5. What is Separation?

The decision made by a party to a relationship to end the relations and then the communicating of that decision to the other party. For a Divorce to be granted, there must have been an irretrievable breakdown of the marriage and the parties must have been separated for at least 12 months immediately prior to the Divorce Application being made.

6. Who can apply for a Divorce?

An Application for Divorce can be made by you alone or jointly with your former partner.

7. What is a De facto Relationship?

A de facto relationship is defined as a genuine domestic relationship with another partner for a period of at least two years. The Family Court Act gives legal rights to those in de facto relationships including disputes regarding children and property settlements.

8. Are we separated if we are still living in the same house?

Separation can be under the one roof. You are separated if you live separate lives. An example of living separate lives is if you do not spend time together socially and you do not sleep together.

9. Does a Divorce deal with my property and children's matters as well?

A Divorce does not deal with issues relating to property and children's matters, so it is necessary for Applications for property settlement and/or spousal maintenance to be made within 12 months of obtaining your Divorce.

10. What if I want to Divorce after less than two years of marriage?

Different rules apply to couples who wish to Divorce after less than two years of marriage.

11. Do I need a Will when I separate?

It is often necessary to change your Will once you have separated from your partner.

12. Do I need a Will when I Divorce?

You will need to make a new Will once your Divorce has been granted. In Western Australia, a Will is revoked by Divorce if the Divorce occurs on or after 9 February 2008. If you do not want your Will to be void, you will need to have this intention expressed in your new Will.

13. How long will it take to resolve my matter?

The Family Court of Western Australia estimates that matters will take approximately 2 to 2½ years to reach a final hearing if you and your partner are unable to reach an agreement in the meantime.

14. What are my costs likely to be?

At Kim Wilson & Co we work as part of a team to minimise your costs. Our Family and Divorce Lawyers charge on an hourly rate basis. Your individual circumstances and complexity will determine the likely costs for you.

Our Family Law team will assist you to consider cost effective options for finalising your matter, and we will endeavour to settle by agreement where possible.

When the necessity for Court proceedings arise, Kim Wilson & Co ensure you are notified of the costs involved in litigating your matter as soon as possible. These costs are set out to assist you to understand the costs involved and to allow you to consider your options, understand the stage of your matter and to assist you to budget for the estimated costs.

15. What is a Property Settlement?

Property Settlement is the division of property owned and acquired during a marriage or a de facto relationship.

16. How do you resolve Property Settlement matters?

You can reach agreement as to the just and equitable division of property accumulated during your marriage or de facto relationship by direct negotiation or by mediation or other informal means.

If you cannot resolve your Property Settlement issues by negotiation, then the Court will determine the division of property after hearing evidence.

The following questions will be relevant:

- What are the assets, liabilities and financial resources of each of the parties?
- What contributions did each party make to the property, in terms of direct and indirect financial and non-financial contribution, and contribution to the welfare of the family?
- What are the future needs of the parties taking into account a series of factors?

Property Settlement negotiations can be complex and complicated in any number of ways. We can assist you with your Property Settlement issues and provide you with advice as to the relevant factors in your family law case.

17. Is the process of Property Settlement the same for married and De facto relationships?

The same general principles apply regardless of whether you were married or in a de facto relationship.

18. What time limits apply in Family Law matters?

For marriages you must apply to the Family Court for Property Settlement and or Spousal Maintenance within 12 months of the date of any Divorce Orders taking effect.

For De facto relationships you must apply to the Family Court for a property settlement and or spousal maintenance within two years of the date you separated from your partner.

19. What is a Financial Agreement?

A Financial Agreement:

It is a written agreement with respect to any (but not necessarily all) of the property, financial resources and/or maintenance of the parties of a relationship. The parties cannot be parties to any other Financial Agreement. The Financial Agreement must be expressed to be made under the relevant section. It is signed by all the parties and their legal advisors. To be a “binding” Financial Agreement, the conditions in the relevant legislations are to be met. Approval from the Family Court is not required for Financial Agreements to be binding.

20. In what circumstances should I consider putting in place a formal Financial Agreement?

To finalise matters with respect to any (but not necessarily all) of the property, financial resources and/or maintenance of the parties before a marriage/de facto relationship, during a marriage/de facto relationship, after separation in a marriage or de facto relationship or after Divorce.

21. What is the benefit of engaging a Family and Divorce Lawyer to assist me with reaching a Financial Agreement?

A Financial Agreement is not binding unless advice is provided to the party and the agreement is certified and signed by a separate legal practitioner for each party before the agreement is signed by the party.

22. What if I do not put in place a formal Financial Agreement, what might be the ramification for me now or in the future?

Without a Financial Agreement, each party can commence proceedings in the Family Court for the Court to determine matters, in most circumstances.

23. What are the steps to formalise a separation and subsequent Divorce?

Separation occurs if one party to a relationship or marriage forms the intention to separate and tells the other party of that intention, either by words or by actions. Otherwise you and the other party may agree to separate or you may tell the other party you intend to do so. You may be the party who has been told by your spouse or partner that they intend to separate.

If you have a Financial Agreement that provides for a separation declaration, then that should be completed if you separate and provided to the other party.

You can be separated under one roof.

You may apply for an Order for Divorce if you have been separated for not less than 12 months. If, at the time of making the Divorce Application, you have been married for less than 2 years, the Court must be satisfied that you have considered reconciliation by attendance at counselling. If some of the period of separation has been spent under one roof then evidence will be required to satisfy the Court that you and the other party lived separately and will require independent evidence to support that. This can be provided by way of affidavit by you and/or your spouse and by a person known to one or both of you who is able to confirm that separation has taken place. The Divorce Order will come into effect one month and one day after the Order is made, unless the Court says it should come into effect on a different day. You are then free to remarry.

24. Do all Family Law and Divorce matters go to Court?

If you are unable to reach an agreement regarding issues such as property or children matters it may be necessary to proceed through the Court process. In most cases, family disputes can be resolved without the need to proceed to the Family Court. Your individual circumstances should carefully be reviewed by one of our Family and Divorce Lawyers.

25. What is the benefit, to me, if I resolve my matter without the need to attend Court?

Once our Family and Divorce Lawyers have had an opportunity to consider your individual circumstances your matter potentially can be resolved quicker in a more cost effective and less stressful manner.

26. In which situations would it be necessary to proceed to Court?

It may become necessary to proceed to Court if you are unable to reach an agreement with your partner in relation to property settlement, arrangements for your children and maintenance.

27. If I engaged Kim Wilson & Co, what is the benefits for me over another Family Law Firm?

We have seven Accredited Family Law Specialists and in house Senior Counsel which ensures representation of the highest standard. Our Family Law Teams approach to your matter is professional, appropriately supervised and reviewed regularly to obtain the best result for you.

28. What happens if there is a Disagreement?

If an agreement cannot be reached regarding your Family Law matter there are options available to suit your individual circumstances, these include Informal Conferences, Mediation and or Arbitration. If you are not successful in these forums in reaching an agreement, then it may be necessary to proceed to the Family Court where a Trial is heard before a Judge and or Magistrate.

Our Family and Divorce Lawyers at Kim Wilson & Co are always looking for pathways to assist you in a timely and cost effective manner in reaching a final resolution.

29. How do children's issues get resolved?

In the breakdown of any relationship involving children, their welfare must remain paramount, and at Kim Wilson & Co we ensure this is the case.

Our Lawyers sensitively assist you to make amicable arrangements with your former partner for the care of your children.

We adopt a conciliatory and constructive approach to ensure any negative impact on your children are minimised and the emotional wellbeing and relationship of your children with both their parents is maintained.

We assist with all aspects for the care of children, including who your children will live with and how and when your children are to spend time with the other parent. Agreement can also be reached regarding specific issues, such as parental responsibility, education or medical matters, which our Family and Divorce Lawyers can document in a Parenting Plan or Consent Orders which can be lodged at the Family Court to make these Agreements legally binding.

30. What is the process I need to undertake if I want to relocate with my children?

Any issue as it relates to children, you and the other parent must attend Mediation unless one of the exceptions applies. If agreement cannot be reached, then proceedings will be required.

The Court process will depend upon where you want to relocate to, the reasons for the relocation, the attitude of the other parent, the age of the children, and your proposals for the maintenance of contact upon relocation.

31. Is it necessary to engage a Family Law Firm to assist me if I want to relocate with my children?

It is possible to act for yourself if you wish to relocate. A Family Law Firm can assist you to ensure the Court has all the relevant information upon which to make a decision in the best interests of the children.

32. What if my partner/the other parent is not involved at all with the Children and has not been in touch with them for some time, do I still need their consent?

The issue of where children live is a major long term issue and responsibility for both parents. If agreement is not possible then Court proceedings will be required. The level of involvement the other parent has with the children will be one factor the Court has to consider in determining the best interests of the children.

33. What if I do not gain consent from the other parent, what might be the ramifications?

If you relocate without the consent of the other parent, or without a Court Order, there is a risk the children will be the subject of a Recovery Order Application (in Australia) or an Application pursuant to the Hague Convention on the Civil Aspects of Child Abduction, if you have relocated away from Australia to a country that is a signatory to the Convention.

You may be criticised by the Court for taking unilateral steps about the care of the children, and this may have implications if you are required to return the children to where you were previously living.

Unlike other aspects of child welfare, the Hague Convention does not require the Court to consider the best interests of the children as the paramount consideration, but rather the principle that any proceedings relating to the care of the children should take place in the Country where they are habitually resident (unless one of limited exceptions apply).

34. How much time will the Court determine each parent should spend with the children?

The amount of time children spends with each of their parents will depend upon a number of factors, including the age of the children, the living arrangements of each of the parents and the attitude of the parents to each other and to the children. If you and your partner or spouse have shared parental responsibility for the children, then the Court will consider whether there should be a shared care

agreement. If that is not in the best interests of the children, or is not reasonably practicable for any reason, the Court will consider the children spending time with the other parent and the terms on which that should take place.

We can assist you and provide you with advice as to the factors to be taken into account in your individual circumstances.

35. What happens if the children do not want to spend time with the other parent?

This will depend upon the age of the children, the reason for the children's wishes, and the background circumstances. The Court will enquire into these issues and make Orders that are in the best interests of the children. The Court may seek Reports from a Single Expert to determine the matter. We can provide you with assistance if your children do not wish to see the other parent or if they do not wish to spend time with you.

36. What is Spousal Maintenance?

Spousal Maintenance is the money paid by one party to provide continuing financial support to the other party post separation or divorce.

37. Am I entitled to Spousal Maintenance if I have been in a De facto relationship?

Spousal Maintenance can be available for both marriage and De facto relationships.

38. Am I automatically entitled to Spousal Maintenance?

Spousal Maintenance will only be required if a party is unable to adequately support themselves with their own personal income or assets.

39. Do I have to pay Spousal Maintenance?

The payment of Spousal Maintenance is not automatic. The needs of an applicant spouse as well as the capacity of the respondent to pay Spousal Maintenance will be considered. There will be a balancing of the needs of one party against the ability to pay of the other party.

40. Is Child Support and Spousal Maintenance different?

Spousal Maintenance and Child Support are different. Child Support is payment made for financial support to children. Spousal maintenance is payment made by one spouse to another to provide for their financial needs.

41. What is Child Support?

Child Support is the financial support paid to contribute toward the costs of caring for the children of the relationship.

42. Do I have to pay Child Support?

The Law states that both parents have a duty to support their children financially.

43. Can I receive Child Support?

The income of you and your partner is considered equally when a Child Support Assessment is calculated. The Child Support Agency provides information to assist you with the amount of Child Support required to be paid.

44. In which situations might it be necessary to implement a Consent Order?

When you and your partner agree in relation to the division of your assets and liabilities, the arrangements for your children and payment of maintenance.

45. What is the benefit of engaging a Family Lawyer to assist in the preparation of Consent Orders?

Our Family and Divorce Lawyers have the experience and familiarity of the Court process to ensure that the preparation and drafting of your Consent Orders are efficient, effective and legally binding.

46. Do I have to go through Family Dispute Resolution or can I just go straight to Court?

Under normal circumstances you are required to attend at Family Dispute Resolution before seeking Court Orders as they relate to the care of children. There are exceptions to this requirement, where the Application to the Court is urgent, or where there has been family violence or child abuse. You may also be exempted from attendance at Family Dispute Resolution where an Application is to be made to enforce an Order that was made less than 12 months prior to your Application. An exemption can also be sought where it is not practicable to attend upon Family Dispute Resolution for any reason. We can assist you if any of these exemptions apply in your particular case.

47. What other options do I have that can help me resolve matters outside of Court?

We can assist you to explore non-Court based options for the resolution of your Family Law issue, including Mediation, Arbitration and Informal Conferencing. These options are often less expensive than Court proceedings, and can be undertaken in a more timely manner. The other benefit to such non-Court based options is that the procedure and process can be managed by you. Such processes can also narrow the issues in dispute if Court proceedings are necessary.

48. What is Mediation?

Mediation is a process where a trained person (the Mediator) helps the parties to a dispute, to negotiate a resolution to their dispute. The Mediator does this by facilitating discussions, and by assisting the parties to identify issues and concerns and to help them identify and explore options to resolve their dispute.

49. Why Mediate?

Mediation offers you an informal means of resolving disputes, without the need for preparation of expensive documents and your attendance at Court.

- Convenience in having Mediation conducted at a time agreed by everyone
- Mediation offers an opportunity for you to tailor the process and the resolution of your dispute to suit your needs and circumstances.
- Mediation is private.

- Mediation usually costs much less for you than litigation, with the result that more of your property is available to you, your other party and your children.

50. What if we cannot reach an agreement through Mediation?

If agreement is not reached at Mediation, then you may need to seek Orders from the Family Court. We can assist you to decide if proceedings are necessary. You may also consider Arbitration or some other form of non-Court based resolution.

51. What is Arbitration?

Arbitration is a process in which parties to a dispute present argument and evidence to an Arbitrator, who then makes a determination to resolve the dispute.

52. What matters can be Arbitrated?

Arbitration can be ordered by consent in matters where there are current proceedings before the Family Court or parties can agree to participate in a private Arbitration without the need for Family Court proceedings.

The issues which can be Arbitrated are limited to financial matters that is property settlement issues, spousal maintenance and Financial Agreements. Children's matters cannot be dealt with in Arbitration.

53. What is the benefit of Arbitration over going to Court?

By participating in Arbitration, which has been designed to address the specific dispute between the parties, and avoiding the Court process, there can be significant cost benefits to the parties.

This material is produced for the law firm of Kim Wilson & Co and is intended to provide our clients and other people who access it general information on our Firm and various legal topics.

The content of this document does not constitute legal advice and should not be relied upon as legal advice.

Before acting or relying upon any content of this documents you should seek legal or other appropriate professional advice.

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