RTLEGAL PTY LTD

Things to consider when partners separate

Do you have a friend or relative who has just separated? If so, the information below should help.

What is meant by separation?

Separation in Family Law is defined as the bringing to an end of a marriage or de facto relationship (which also includes same sex couples). There is no need or ability to register a separation under Australian Family Law. Separation is a fact which must be proven if it is disputed by the other party at a later time.

In the case of a divorce, the date of separation is recorded on the Application for Divorce and is sworn or affirmed to be true and correct by the Applicant. If you cannot prove you had separated from your spouse at least 12 months before you file your Application for Divorce, the Court will not grant your divorce.

Therefore, it is a good idea to confirm the separation in writing, even if this is via text message that can be saved, at or shortly after the time of separation. Often divorce cases and cases for property settlement in de facto relationships can turn upon whether or not a party can prove that separation occurred on a particular date.

What about de facto relationships?

In the case of a de facto relationship, particularly where the relationship ends on or about the two year anniversary, whether or not a property settlement is available can depend on whether the separation took place before or after the two year anniversary. If the de facto relationship was less than two years long the Court may have no jurisdiction under the Family Court Act to provide a property settlement. There may be alternate remedies available or another basis other than the two year requirement to show that a de facto relationship existed.

In addition, there is also a two year limitation period in which to commence the Application, from the time of separation. In such cases, again, the date of separation can be significant.

What about if you still live together?

Separation can take place even though the parties live under the one roof and it can also be a gradual process. In these cases, the Court will need to examine a number of factors to determine when and if a separation has taken place. Those factors can include whether the parties:

- Slept in separate rooms or together after the alleged date of separation;
- Performed domestic duties such as cooking and washing for each other after the alleged date of separation;

- Separated their financial affairs to any extent after the date of separation;
- Lodged or signed any documents informing government agencies of the separation, such as Applications for Centrelink or ATO documents as a single person, as opposed to a person in a relationship;
- Continued to be intimate after the date of alleged separation; and
- Made it publicly known (such as by telling friends and family), that they had separated.

Ten things to consider if a person has just separated:

- Contact your bank or financial institution in writing (by fax or email- with your signature appearing) to stop joint funds being removed or liabilities increased.
- If you have a Power of Attorney, ensure it is revoked, and have a new one drafted.
- Consider whether your nominated death beneficiary for your superannuation entitlements is appropriate.
- Photocopy all of your and your ex's financial documents and put them in a secure location (this should not be your home or motor vehicle).
- Look at your Will and consider if it is still what is appropriate and if you do not have a Will have one drafted.
- If you have children, contact the Child Support Agency and find out how much is to be paid or is payable.
- Do title searches on your properties. If your home is not in your name or is in joint names ensure you place caveats over the properties. If your property is held as a joint tenant, ensure you sever the joint tenancy.
- If there has been family violence in the relationship you may need to seek a Restraining Order.
- Start a diary which keeps track of time your partner has with the children and any adverse behaviour he/she displays.
- Seek advice from an experienced Family Lawyer.

If you need more information, or if someone you know needs help, get them to call us to speak to one of our solicitors on a no obligation basis on (03) 9459 5764 or email us admin@rtlegal.com.au.