

The perils of representing yourself in the Family Court

The Family Court of Australia was one of the first courts to recognise self-represented litigants as a permanent and significant client group.

Research indicates that 20 to 30 per cent of Family Court cases involve a party who is self-represented at some point.

It is important to weigh up the benefits of using a lawyer even if you don't have to as the consequences of not following the correct process, filing incorrect documents or filing them out of time could be disastrous.

In this article we examine some of the issues that can be encountered.

How the Family Court can help

The Court has gone to considerable lengths to streamline the process for self-represented litigants at court, providing them with increased support by simplifying its procedures to encourage the early resolution of disputes, and to make the Court more user-friendly.

The Court now provides do-it-yourself kits for guidance and assistance on completing some of the most common forms, including consent orders, financial statement, affidavit and service.

In addition and where possible, the Court provides a duty registrar to assist self-represented litigants with Court processes and procedural advice.

Things to consider about the Court process

- Where one or more of the parties is a self-represented litigant, the principal effect on the judicial officer is to increase the time spent on the case, both before and during the trial and may include more delays than is usual and more adjournments. Family Court staff and court officers while not being able to give legal advice, are required of necessity to explain the court processes and procedures to the litigant.
- Self-represented litigants often fail to identify a known cause of action in their pleadings.
- A common complaint is that judges extend too much leniency to self-represented litigants in making submissions. There may be a perception that judges sometimes take the line of least resistance and let the self-represented litigant 'get it off their chest'.

- Situations frequently arise, particularly in the family law or domestic relationships jurisdictions, where self-represented litigants use the court proceedings as an opportunity to embarrass or harass their former partner. This may or may not be deliberate.

Instructing a lawyer too late

We have encountered many potential clients who are either in the process of representing themselves in the Family Court or where their matter is already complete.

What we usually discover in these cases is that the outcome could have been better, the matter requires the immediate attention of an experienced lawyer or that it may have been so badly put together or presented that it is past the point where even the best lawyer can help.

There are also many practical issues that your lawyer can advise you about, that don't appear in a DIY kit, if you are separated or in the process of divorce.

Some tips, traps to avoid and issues to consider

- Agreeing to move out of the matrimonial home can cost you a lot of money. Seek legal advice first.
- Everything you say, text, email, tweet or put on Facebook including things said in the strictest confidence to family or friends can get back to your former partner.
- Don't rely on memory - keep a diary but remember it may be read by the Judge, so be careful what is written. Perhaps limit it to points that will jog your memory.
- If you decide to engage a lawyer, then make it worthwhile and have a comprehensive discussion, not just those points that you feel are in your favour.
- Before you separate take photographs or photocopies of bank books or accounts, taxation records and superannuation papers, so the sums and account details are identifiable.
- Before you move out take all your personal papers with you, including jewellery and your personal items.

Conclusion

What many people attempting a DIY divorce don't know is *how much they don't know*. It is like many tasks where experience can help speed the process and lead to a more successful outcome.

Self-represented litigants often have difficulty identifying and pleading a cause of action, which may result in more court attendances as well as confused and lengthier trials.

It is most advisable to see an experienced family lawyer first to identify the appropriate issues, advise you on your options on those issues, fight for a positive outcome on those issues, and make sure all of the issues have been examined.

If you know someone who may need assistance get them to call us on (03) 9459 5764 or email admin@rtlegal.com.au.