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LEGAL SOLUTIONS ● ● ●

13 Things To Do When You Separate



Step 1 – Change Your Passwords



- On separation its especially important, to change all your passwords for your online banking, social media accounts, email accounts, cloud accounts and any apps where you keep digital copies of important documents.
- It's important to ensure that all tracking apps are off or inaccessible.

Step 2 – Change Your Postal Address



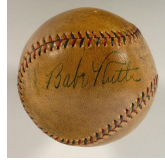
- Like changing passwords to protect access by your former spouse to important documents or communications with third parties like a solicitor, some government organisations still use the old ‘snail mail’ as a form of communication.
- The ATO, Child Support Assessment Agency and Medicare, to name just a few, are still guilty of killing trees in the aim of writing to us.
- Consider opening a PO Box or directing mail to a family member to ensure confidential communications are not falling in the hands of your former spouse.

Step 3 – Take a copy of the marriage certificate



- A copy of your marriage certificate is required if you are intending to proceed with a Divorce Application. Many people misplace their marriage certificate and are required to order a new one upon filing for divorce.
- In the event you misplace it you can apply to the Registry of Birth Deaths & Marriages for a fee although if you were married overseas, the process will no doubt take longer and could potentially be more expensive.

Step 4 – Place valuable and sentimental items somewhere safe



- Items such as the jewellery that a parent gave you, trophies or a signed copy of sporting memorabilia should be placed somewhere safe so it cannot be lost or broken.
- Items like these could also be sold by your spouse and although the court requires parties to account for any items sold post separation (*Rule 6.06 Federal Circuit and Family Court Rules 2021*), they will likely be sold for less than their market value and once gone it is difficult to assess an items true value without seeing the original.
- Consider storing these items at a family member or friend's home.
- If you cannot take them, consider video or photographing the item. That should include signatures and certificates of authentication.

Step 5 - Store your Financial Documents and other valuable documents somewhere safe



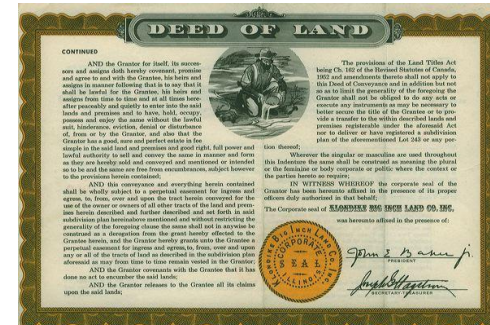
- Financial documents are documents relating to the assets, liabilities and financial resources in your name.
- This would include those held solely in your name or with either your spouse or a third party.
- For example, bank statements, taxation returns and credit card statements. It is important that you retain this information.
- The information will also be helpful in having a solicitor prepare a Financial Statement in the event of an application for property settlement and in determining the assets and liabilities the parties have.
- Other important documents include children's birth certificates, your own identification documents such as passport, driver's licence, tax documents, bank statements (including credit cards, mortgage and savings), vehicle registration papers, insurance and superannuation documents. There is no limit to this list of personal documents, it is best to take everything you want at the time, particularly if you are moving out.

Step 6 – Contact your bank or financial institution



- Should you have joint accounts or credit cards, you should immediately advise your bank of your separation.
- One option is to ensure the bank either puts a hold on any joint accounts or requires both your signatories to any withdrawals.
- The other option is to close any joint bank accounts and divide the funds between you as early as practicable.
- Open a bank account in your sole name, make sure you notify your employer (if you employed) of the new account details for your wages to go into, and the child support agency or Centrelink if you are on benefits. This will ensure a smoother process later on when dividing the major assets during property settlement.

Step 7 - Sever the Title to any joint real estate



- If the property is held as joint tenants and one of the parties dies, then their half interest in the property will automatically pass to the surviving party under what is known as the 'right of survivorship' regardless of the terms of any Will.
- If parties hold their interest as tenants in common and one dies, then their interest in the property will be determined in accordance with their Will.
- This is relatively easily done and no notice to your spouse is required and no fee payable.
- However there are some risks with this, namely:
 1. Once the title is severed into tenants in common the other spouse could transfer their ownership to a third party.
 2. Mortgage their share.

Step 8 – Make arrangements for children



- Children need stability in times when parents separate.
- Arrange counselling for them as soon as possible.
- Depending on what the living arrangements may be, it may be necessary for the child/children to live with one parent and spend time with the other.
- In addition, s.60cc of the *Family Law Act 1975* recognises that there is a benefit to a child of having a meaningful relationship with both of the child's parents. The exception to this of course is when the child is at risk of abuse, neglect or family violence.
- Consider entering into a parenting plan first particularly where the children are quite young (i.e. infants) and then when parties agree to either a equal share time or settled fixed arrangement after determining with whom the child/children will live and spend time with, seek final orders from the court. This could be arranged through Relationships Australia or private mediation.
- Have the child's/children's passports held by a lawyer or the court. Some countries such as Indonesia, are not signatories to the Hague Convention and therefore recovery orders not enforceable.

Step 9 – Keep a diary



- Write down particular dates and events. Should you be required to go to court later, the more documentation you gather early, the easier it will be in the future.
- These include any of the following:
 1. Periods of separation
 2. Significant financial contributions (e.g. inheritance or receipt of compensation) or changes in employment
 3. Purchase or sale of real estate
 4. Any historical events of domestic or family violence or abuse (Kennon's argument).
 5. Renovations to property done by you which added value but saved cost.
- Make sure you then try and obtain documents supporting any significant financial contribution.

Step 10 – Seek counselling and support



- It is important to have support from those who care about you. It is critical to your mental health during this time to seek out help and support from professionals, friends and family.
- This will enable you to think clearly when making decisions about property or the children and when giving instructions to your legal representative.

Step 11 – Review your Will and EPA



- If you have a will it is important to note that separation does not change gifts in a will. If your will says “I appoint my spouse as my executor and give all my estate to my spouse” then, in the event that you die your spouse will make decisions regarding your estate and as main beneficiary receive the entire estate, which is probably not what you would want to happen having just separated from your spouse.
- Therefore urgently make arrangements to make a new Will.
- It also a good idea to have a Enduring Power of Attorney (EPA). If you separate, then become legally incapacitated, your attorney can manage your legal and financial affairs and you can have peace of mind knowing that your finances will be managed according to your wishes.
- If your spouse is the attorney, revoke the appointment and if necessary draw up a new document.

• As with your Will,
you may want to



Step 12 – Review other policies

- As with your Will, you may want to update your superannuation, life insurance or other death benefits after separation.
- You often have binding nominations as to whom will receive your superannuation for example and it is important to change that if the nominated person was your spouse and you have now separated.

Step 13 – Get legal advice



- Seek legal advice from a lawyer well versed in family law prior or upon separation. Unfortunately, most people wait months and sometimes years following separation to see a family lawyer.
- By proactively engaging an experience family lawyer, you will receive advice and tools to assist you navigate your separation.
- There are time limits to apply for property settlement and spousal maintenance so it is important to know what time limits apply to you.

Disclaimer

- We are providing this information to you as a resource only and it should not be acted upon without consulting our firm or another solicitor. Until you have formally engaged our firm, we are not acting for you in relation to your family law matters. Time limits apply in relation to applications for property settlement and spousal maintenance and you should seek immediate advice so you are aware of your rights and the time limits that apply to your circumstances.

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