

Dispute Resolution Edition

Court action is not the usual way to resolve a family law dispute. Even if Court proceedings are issued, about 95% of cases settle before a final hearing. Forte Family Lawyers provide the full range of dispute resolution processes.

You can choose your preferred method of dispute resolution. Some options include collaborative family law, mediation and arbitration. If none of these methods appeal we can still negotiate in the traditional way through correspondence between lawyers and perhaps a round table conference.



After agreement is reached, your settlement will be documented in the most appropriate way.

The options include:

- Consent orders;
- Financial agreement;
- Child support agreement; and
- Parenting plan.

Collaborative Family Law

Collaborative family law is a client centred process for resolving issues after separation. By focusing on mutual problem solving, the goals and interests of each party are considered. The aim is not winning and losing but reaching an outcome that is acceptable for both parties. The process is designed to preserve and enhance the family relationships.

All information sharing and negotiations take place openly through four-way meetings involving both parties and their lawyers. Parties usually improve their communication and achieve a better post-separation relationship than if they resort to other, more adversarial processes.

Another feature of collaborative family law that makes it different from other dispute resolution methods is the agreement that is signed by both parties and their lawyers. The parties and their lawyers agree not to go to court.

The agreement also sets out principles that should be followed relating to the process and behaviour of the parties, such as:

- full disclosure of relevant information
- not doing anything unilaterally which might be provocative, such as lodging a caveat or reducing payments of child support

Prior agreement as to such principles ensures that the process and outcomes are successful.

The four-way meetings are designed to encourage parties and their lawyers to be open and creative in contributing to a solution. The parties identify their concerns and priorities and the issues that need to be resolved.

Negotiations and discussions occur with the parties and their lawyers all in the one room. The need for seemingly endless letters between the lawyers is eliminated. Productive negotiations and discussions between the parties occur more easily once the threat of going to court is removed.

The parties have greater input into the process than in lawyer directed negotiations or litigation. At the same time they gain the benefit of legal support and advice during the process.

The collaborative process is private and confidential. Discussions are without prejudice and cannot be used in court. Independent experts can be used to deal with issues such as property valuations and parenting.

If a dispute is not resolved using the collaborative process, the lawyers and their firms cannot act for their clients in court proceedings. Both parties must engage new lawyers. This helps to motivate the parties to negotiate an outcome which is acceptable to both parties.

Parties are usually happier with the collaborative process than with traditional lawyer-based negotiations. The risk that the parties will have to change lawyers and go to court is extremely low, about 4% - 5%.

Jacqueline Campbell and Wendy Kayler-Thomson of Forte Family Lawyers are two of the first Victorian lawyers to train as collaborative family lawyers. Only lawyers who have completed the training can use the collaborative law process

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Mediation

Mediation is a dispute resolution process in which the parties meet with the assistance of a trained mediator to discuss the issues that are in dispute.

The mediator is a neutral third party who helps the parties to communicate and resolve their dispute. The mediator guides the process so that both parties have an opportunity to express their opinions and concerns and come to an understanding of the other's needs.

Mediation is private and confidential, and may be less expensive than going to court. It can be used to resolve disputes about property and other financial issues, as well as disputes involving children.

The parties discuss what is important to each of them and try to come up with creative solutions. The mediator does not give legal advice and cannot make decisions for the parties, but assists the parties in reaching an acceptable solution.

Broadly, there are two types of mediation in family law disputes. Mediation can include:

- the parties, their lawyers and a mediator.
The parties have the benefit of legal advice and assistance during the mediation. An additional benefit is the parties can choose the mediator;
- the parties and a mediator or two mediators without lawyers. The parties obtain legal advice before the first mediation session and between mediation sessions if there is more than one session. The mediator is usually selected by the organisation which employs the mediator, such as Relationships Australia or the Family Mediation Centre.

If an agreement is reached, the lawyers can draw up a financial agreement or consent orders to file with the Family Court. Once the orders are made they are legally enforceable.

Wendy Kayler-Thomson of Forte Family Lawyers is a qualified mediator.

Arbitration

Arbitration is available for financial disputes. Like mediation, arbitration involves an impartial third party. However, arbitration is different from mediation because the third party, or arbitrator, makes a decision which is binding on the parties.

Arbitration may be conducted 'on the papers' or via a hearing. In 'on the papers' arbitration, the arbitrator makes a decision based on written submissions from each party. The arbitrator sometimes holds telephone conferences. More commonly, arbitration involves a hearing, where the arbitrator may ask questions and parties may be cross-examined.

Sometimes, parties arbitrate a specific issue, such as the valuation of a business, which stands in the way of them otherwise reaching agreement.

Arbitration offers certainty. There will be a result reached. An arbitrator's decision is registered and has the same effect as a court order.

Generally, arbitration is less formal, more flexible and less expensive than litigation. Parties can select the arbitrator (except where arbitration is court-ordered) and thus have significant control over the choice of arbitrator involved in resolving their dispute. This differs markedly from the court system, where parties have no say in the appointment of a judge or magistrate. In comparison to court proceedings, arbitration usually allows a matter to be finalised faster and more efficiently.

A family law arbitrator is a private practitioner who has completed the requisite arbitration training.

Jacqueline Campbell of Forte Family Lawyers is a qualified arbitrator. There are only 20 qualified arbitrators in Victoria.



Family Relationship Centres

Family Relationship Centres were developed as part of the extensive family law reforms introduced by the Federal government in 2006. A total of 65 Centres are planned nationally. So far, 15 of the Centres have opened, with at least one in each State and Territory. The remaining 50 Centres are due to open throughout 2007 and 2008 at various locations in Australia.

Centres are operating in Victoria at Frankston, Ringwood, Sunshine and Mildura. Others are planned for Ballarat, Berwick, Broadmeadows, Chadstone, Cranbourne, Geelong, Greensborough, Melbourne City, Morwell/Traralgon, Shepparton, Warrnambool and Wodonga.

Family Relationship Centres can be a first step for people seeking help with relationship and family issues, but they do not offer legal advice. They provide information and guidance on aspects of relationships, from information to breakdown. People requesting advice can obtain an initial overview of their options, and may be referred to another centre or organisation where appropriate.

The Centres offer both general guidance and particular forms of dispute resolution, such as mediation. Individual sessions are offered free of charge. Joint sessions are free of charge for the first three hours, after which a fee may be charged. During sessions, staff aim to clarify the issues in dispute, paying particular attention to the needs of any children and assisting parents in coming to an agreement on parenting arrangements. Public information sessions are also offered.

From 1 July 2007, parties will usually need to attend a Family Relationship Centre before issuing Court proceedings regarding a parenting dispute. The exceptions include:

- Parties who have previously sought or obtained a Court order in relation to the child
- Orders sought by consent
- If the Court is satisfied there are reasonable grounds to believe there have been abuse of a child or there is risk of abuse of a child, there has been family violence or there has been risk of family violence

De Facto Legislation Update

It seems that the tabling of the long-awaited Bill relating to de facto property settlements has been put on hold. The *Family Law Amendment (De Facto Financial Matters) Bill (Cth) 2007* was expected to be presented to Federal Parliament during the 2007 autumn sittings. However, it is now likely that the Bill will not be tabled in Parliament until after the Federal election later this year.

Under the Bill, de facto couples are likely to be treated similarly to married couples with respect to financial and property matters.

Whilst lawyers and clients should be conscious of the upcoming legislation, the dates on which the Bill will be tabled, passed and become law are still unknown. Therefore, it would be unwise to simply 'wait' for the Bill. The existing Victorian legislation requires court proceedings to be commenced within two years of separation from a de facto partner. Delay beyond that time may result in a loss of rights.

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