

Separation Myths.

10 myths about divorce.

fact



fiction

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separate fact from fiction.

If you have separated from your spouse, you are now left with the daunting task of navigating your way through the maze of separation. There are many myths surrounding divorce and financial separation. It is difficult to know what is fact or fiction. Here are a few of the more common myths you will come across and Divide's response to these myths.

How well you navigate through the maze of separation will go a long way to determining how well you are able to move on.

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1 You need a lawyer

This is the biggest myth. These days there are several options when separating from your partner. These options are (from least expensive to most expensive):

- Do it yourself
- Do it yourself with the support of Divide
- Use a mediator
- Use a lawyer

It is important to understand your options, the pro's and con's of each and which one is best suited to you, when you take all of the factors into consideration.

2 Divorce is a one step process

There are several steps to separating from your ex-partner. They can happen in any order, and there may be a logical order for you to proceed based on your personal circumstance. The things you need to finalise are:

- Separation: this is communicated intention to separate.
- Divorce: this can be done after 12 months of separation.
- Financial settlement: this can be done at any time after separation, but must be done within 12 months of divorcing or 2 years from the date of separation for de facto relationships.
- Parenting orders.
- Other: change wills, property transfers, bank accounts, insurance policies, superannuation beneficiaries etc

3 Same sex and de facto couples aren't treated the same way as married couples

When it comes to separating, we are all treated the same. You may not be married in the eyes of the law, but from 1 March 2009 (1 July 2010 in South Australia), de facto and same sex couples who separated after these dates are covered under the Family Law Act 1975. So the process and obligations are exactly the same for all couples who are separating.

4 Your friend is the expert in relation to your separation

Everyone has an opinion about the best way to go about separating. In order for anyone to be able to provide you quality advice with regards to your separation, they need to understand all of your circumstances and the implications of these circumstances. It is advisable to accept the support you get from your family and friends as this is invaluable in such a difficult time, but when it comes to the actual process of separating it is important to either educate yourself of the key considerations for your circumstances or obtain support from someone who understands the process.

5 Divorce is an expensive process

Reliable data on the average cost of divorce varies from \$20,000 per individual to much higher, with some sources quoting an average cost of \$60,000 per individual. There are also many horror stories where the only people benefitting from a divorce are the lawyers.

However, it doesn't need to be expensive. If you are able to navigate through the process yourself, you can lodge the required forms directly with the Family Court, costing you only the lodgement fees and your time.

If you don't want the expense or drama of using lawyers, then Divide provides a cost effective solution to effectively help you to separate. The average cost per couple is between \$3,000 and \$8,000 plus lodgement fees, which is significantly less than using lawyers.

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6 The Family Court process is fair and accessible

Unfortunately it is not – you need deep pockets and lots of time. There is no correlation between the amount of money you spend on lawyers and the outcome for you in Court, if you make it that far. It really comes down to which judge you get and the judge's understanding of your circumstances (which depends very much on the competency of your lawyer and barrister). The Family Court actively encourages people not to go to court, requiring compulsory mediation first in many family law matters, to assist you to sort it out yourselves without lawyers.

Unless you have an urgent child custody matter, for the average person, Family Court is not somewhere you are likely to end up. Even if you do get your matter to court, the outcome can be very unpredictable.

For most people, not only does it cost a relative fortune, but it can take years for a matter to be heard and then months later the judgement will be handed down. This process does not allow you to move on with your life any time soon.

7 Lawyers have an obligation to act in your best interests

A lawyer's obligation is to represent what the client wants them to do, even if the client's wishes are completely unrealistic. A good lawyer will advise their client if they think they are wasting their time or money. A bad lawyer will happily act under instructions from their client, no matter the likely outcome, as the client will be paying for the lawyer's costs irrespective of the outcome.

8 Financial settlements are based on the assets when you split up

The assets of the relationship are split when the financial settlement is completed. This can be a long time after the actual separation. Therefore, it is important that the assets of the relationship are protected and preserved until the financial separation process is completed.

9 Lawyers negotiate for you and do all the work.

For the amount they charge, you would think this is the case. When it comes to negotiating who gets what of the combined wealth pie, there is no set formula, there is no 50/50 rule of division. A number of factors are considered with the final test being a division that is 'just and equitable'. These considerations could be things such as the relative earning capacity of each person and where the children will live. The length of the relationship and the value of assets each person has brought into the relationship are also factors which may change this split. This is ultimately a negotiation between the separated parties. The decision whether to accept a proposal is yours, not the lawyers. As such, you are responsible for accepting or rejecting a proposal.

With regards to the lawyers doing all the work for you, unfortunately this is not the case. You still need to collate and provide all of the information required to complete the financial settlement process. Quite often the only role the lawyer plays is to act as an expensive intermediary between you and your ex's lawyer.

10 Lawyers are financially literate

Lawyers spend years training to understand legal matters, not financial ones. Many are not financially literate at all. They rely on other experts, such as accountants, at your cost, to get the information required to complete the financial settlement process.

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