We are a new Adelaide Family law firm with a strong client focus!

Adelaide Family Lawyers are committed to access to justice. What this means for you is that we encourage Legal Aid clients as well as fee-paying clients and assist you to complete the relevant application form, explain the court process and how we propose to assist you. We will listen to your concerns and clarify precisely what is achievable within the procedural restraints of the court processes and rules. If you contact us by telephone we request that your calls are relevant and that you keep them to a minimum but having said that we will always return your calls within 24 hours.

We know that family law issues, more often than not, also include elements of child support, tenancy and other legal areas and we can provide you with comprehensive advice on these issues as well as other areas that you might not have thought of, including making a will, making a new will depending on your circumstances and if they have changed, administration of deceased estates, binding financial agreements and child support agreements.

We assure you that we will research any areas where we need further information to advise you comprehensively. For example, we have researched issues with passports for one client where the other parent refused to sign to find out the Passports Office procedures and how they can assist clients and whether this was a speedier alternative than proceeding with court action. Additionally, if we can see that you are proactive and wanting to be involved we will refer you to relevant websites and organisations. For example, the old medical powers of attorney have been replaced, as of 1 July 2014, with a new advance care directive which most people are capable of completing themselves and this process is set up on-line so that you can do so.

We endeavour to keep our fees at a minimum. For example, we do not charge a file opening fee, we are open to negotiation with our fee structure, can do set fees for certain items and we do not charge for any telephone calls from clients that last for only a minute or two. We prefer to have a paperless office as far as possible and prefer to send documentation and letters to our clients by email or fax. We can guarantee that all telephone calls will be returned, that we will check and answer emails daily and our file management procedures are always up to date.

All areas of Family Law are offered including children's issues, divorce, wills, pre-nups and property settlements and we are also

expert on child support issues and tenancy law. Contact us to make an appointment for a first free interview and judge for yourself.

First interview is free (45mins) but there may be court or other costs out of our control.

During your first free interview we will work out a strategy going forward and you won't pay for our time. There may be some filing fees payable to the court or perhaps costs for a report by an independent person that you would possibly need to pay depending on the success or otherwise of your legal aid application.

Family Law service information:

We no longer talk about parental rights in Australia or use the terms ‘custody’ and ‘access’.

The current terminology is who the child ‘lives with’ and who the child ‘spends time with’. The Family Court of Australia and the Federal Circuit Court of Australia are the courts that deal with family law issues including children, property and divorce.

Separation is a difficult time for couples and more so where children are involved. Adelaide Family Lawyers can advise you about reaching agreement on living arrangements and can refer you to community based organisations in the first instance if you feel you are able to make arrangements with the other parent, or alternatively can assist you to formalize such arrangements to make them enforceable.

The Family Law Act 1975 (as amended) refers to the best interests of the child. What this means is that the child or children’s needs and interests are paramount to anything else. When relationships break down it is often the case that one parent considers themselves more integral to the child/ren’s care but there are always other considerations. These include the notion that the child has a right to have a meaningful and ongoing relationship with both parents, and each parent is expected to encourage such a relationship between the child and the other parent. However if there is any domestic violence, drug abuse, alcohol abuse or any type of controlling behavior from one parent then these factors also need to be taken into account when applying for parenting orders. Essentially the children should have a meaningful relationship with both parents to help them to achieve their full

potential but they should also be protected from physical and psychological harm.

Many parents believe they are entitled to shared care of any children of the relationship. Amendments were made to the Family Law Act 1975 in 2006 to accommodate this notion but in practical terms it is often not realistic. For example it may be the case that one parent works part-time and another parent works full time. In such cases the parent who works full time can meet the child's needs better and spend more quality time with the child by spending less time with the child but to incorporate more quality one on one time with them. Often the full time working parent has what is called 'substantial and significant' time with the child rather than shared care. For a shared care arrangement to work there has been substantial research which shows that the parents must have good communication, share notions of what is best for the child and be available to help each other out with the care of the child as need be. If there is ongoing conflict or personality issues which are never going to be sorted out then a shared care arrangement is highly likely not to succeed.

In practice all parents are required to attend mediation prior to applying to the court for a parenting order. This process can be by-passed if there are issues such as domestic violence which make it impractical for the parties to reach agreement. Otherwise if the parties are unable to agree at mediation or one of the parties refuses to engage in the process you will be provided with a certificate which states that mediation has been unsuccessful and you may then apply to the court for parenting orders.

Before you can start proceedings, you must get a certificate indicating that you have undertaken 'appropriate mediation' or 'primary dispute resolution'. This is compulsory in children's matters. It involves going to a Family Relationships Centre or an Accredited Family Dispute Resolution Practitioner and attempting to resolve the issues. Hopefully this brings about agreement and you can then take a shortcut in the Court process by having the agreement made legally binding through Court Consent orders.

When you make a court application for parenting orders, in most cases the parents will agree to equal shared parental responsibility What this means is that you will both have joint responsibility for making decisions about the day to day and long term care welfare and development of the children. This may include agreement on the schools the children will attend, medical and dental treatment and other long-term decisions relating to their general welfare.

There are differing types of parenting orders: Those that identify the parent with whom a child lives; Those that identify the parent with whom the child will spend time and when this will occur; Any orders that are required in the special circumstances of the case relating to any special needs of the child such as health issues.

Adelaide Family Lawyers can assist you and guide you through the court process with the paramount consideration being the best interests of the child. Parents can apply for these orders but as is often the case, many grandparents , step-parents and other concerned persons are now applying for such

orders where the parents are unable to care for the children for a variety of reasons.

Of course many separated couples do agree on arrangements for children after separation and may not require the assistance of a lawyer other than to document that agreement and register it with the court.

Many clients ask us about the children's wishes. Children are often included in interviews throughout the court process if they are of a suitable age to have their opinions included. This depends on a variety of factors, including whether the judge hearing your matter considers the child old enough to engage in the process, whether the child is sufficiently mature enough or there are special circumstances that indicate the child should be included. The orders of the court cover the children until they turn 18 years of age but in practical terms many children in their mid to late teens will tend to make their own decisions about who they wish to live with.

Parenting orders require consideration from the parents on:

- • the child's residence,
- • whether the 'live with' arrangements will be shared or otherwise,
- • the type of education and schools they will attend,
- • attendance at sporting and extra-curricular activities and what is appropriate in the circumstances,
- • how the 'time spending' arrangements fit in with each parent's working hours,
- • location and time spending arrangements with significant other adults in the children's lives such as grandparents and other relatives,
- • arrangements for school holiday periods and special events such as birthdays of the children and other family celebrations,
- • special needs of the children including medical requirements, flexibility for special occasions such as Easter, Father's Day, Mother's Day, travel within Australia or overseas.

Children are not allowed to give evidence if your matter proceeds to trial. The determination of their best interests is determined by experts appointed by the court, these being social workers and psychologists experienced in children and family matters and also in cultural matters. The court takes a very dim view of parents who try to influence the children against the other parent and we often seek injunctions restraining both parents from discussing the court issues in front of or with the children, belittling the other parent in the presence of the children or posting any details of same on any form of electronic media. This includes text messaging, Facebook and other electronic media. We have even had to seek orders on some occasions prohibiting parents from posting pictures of their children on Facebook and in some instances being ordered to remove pictures from Facebook.

You may have very distinct and valid opinions about why the children would be better off in your care but trying to influence the children is not the right way to go about it. If your view is simply that you consider you are a better parent or the other parent is unsuitable in your opinion this will not justify orders being made to that extent. However if there is a genuine fear that the child is in danger then this is a very valid concern.

When experts interview your child to prepare a report for the court this may involve the following:

- Interviewing the child separately with each parent;

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- Interviewing the parents separately without the child present;
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- Interviewing the parents separately with the child and observing the interactions between each parent and child;
- The expert will then write a report to assist the court in progressing the matter with relevant orders. If the matter proceeds to trial the expert's report will form part of the evidence and the expert will usually be asked to provide oral evidence at trial.

When parents separate either of them can make an application for administrative assessment of child support.

The Child Support Agency has its own legislation and a formula which staff use to determine how much a parent should be paying towards the support of their children. Each assessment lasts for a 15 month period, is assessed on gross earnings from your most recent tax return information and the Agency includes all forms of income in this assessment. It is not possible to try and reduce your income by strategies such as salary sacrifice or negative gearing of rental properties. The Child Support Agency will add these amounts back in to your gross income for the relevant period. If you have a child support debt you cannot discharge this debt through bankruptcy. Basically all forms of income are included for the purposes of a child support assessment and if you become bankrupt the debt remains.

Parties should seek assistance from Centrelink as far as payments for children as Centrelink staff need to know the level of care being provided by each parent so they can make a determination as to the level of family benefits paid. Additionally most parents in the role of the main carer for the children will be required by Centrelink to make an application for Child Support Assessment. However there are some cases where you will not need to make such an application such as if there was domestic violence in the relationship and this is ongoing. In such circumstances you would be granted an exemption from Centrelink and not required to apply for Child Support Assessment. You would then receive the full Centrelink benefits available to you whereas when you apply for Child Support Assessment your benefits from Centrelink are reduced as you are receiving support from the child's biological parent via the assessment.

If you are a non-parent carer for a child you may be able to apply for Child Support Assessment against both biological parents. You will need to prove that you are the main carer for the child by way of an order from either the Youth Court or the Federal Circuit Court.

There are a few ways to change or reduce the amount of child support you are assessed to pay. The Child Support Agency uses your latest taxable income from your most recent tax return. If you have had a decrease in earnings and this is at least 15% less than the last taxable income used in the assessment you can apply to have the amount reduced. If the other party has requested the Child Support Agency to collect payments on their behalf and you have agreed to make cash payments, the parties need to contact the Agency to advise of those cash payments so that the total amount payable is credited with those amounts. These are called non-agency payments and you may be able to reach agreement with the other party to pay school fees and other school costs for the children direct to the school. In this way, you can have some say in how the money is used.

Your child support assessment can be reviewed internally through a process which provides 10 different reasons for requesting a review. One of these is if it is costing you more than 5% of your taxable income (used in the assessment) to spend time with the children then you can apply for a change to the assessment. Child support agreements can also be included in property settlements. We have extensive experience in all aspects of child support and can draft an agreement for you. There are two types of agreement: limited and binding. The limited agreements last for 3 years only and need to be renegotiated after that time.

Binding agreements last until such time as the parties may decide to replace it with a different version of the initial agreement but if they cannot agree then one party would have to take the matter back to court to have it changed. Consequently the drafting of a binding agreement needs to be very specific with both parties required to seek independent legal advice on the agreement before signing. A badly drafted binding agreement lasts until the children turn 18 and if that is not to occur for a number of years then you may find yourself in a bad position both financially and emotionally. For example, if two children turn 18 a few years apart then the agreement should be drafted to the effect that when the older child turns 18 the amount paid is reduced to cover the younger child only. We can help you to navigate the sometimes complex Child Support legislation and procedures and explain these in Plain English.

We can assist you through the divorce process and provide information on associated issues such as child support and property settlement.

Many clients think that they cannot apply for property settlement until they obtain a divorce. This is incorrect: you can apply for property settlement at any time after separation and indeed if you decide to separate under the same roof. The difference with obtaining a divorce first is that once you are divorced you are on a time limit to complete property settlement within 12 months.

The divorce application requires that you have made appropriate arrangements for the children, for

example for their schooling, medical issues, parenting arrangements and child support arrangements. We can provide you with information and advice on these issues and assist you to streamline the process and make it as pain free as possible.

The court does not need a reason for the breakdown of your marriage or your reasons for requesting a divorce. It only requires that the marriage has broken down irretrievably and that you have been separated for 12 months.

However if you have been married for less than two years you will be required to attend counselling and obtain a certificate from the counsellor before applying for a divorce.

Parenting and property matters are usually finalized before or during a divorce proceeding but in practical terms it usually advisable to finalise all parenting and financial matters before applying for a divorce.

To apply for a divorce you will need to obtain the following documents and/or information:

- • A marriage certificate to prove you were married,
- • Proof that you have been separated for at least 12 months
- • No reasonable prospect that you will reunite with your spouse
- • You and your spouse are Australian residents or citizens or regard Australia as your permanent home

If you can satisfy all of the above and you make a joint application with your spouse and there are no children under the age of 18 you do not have to attend court to obtain your divorce.

If you have been in a de facto relationship you can seek financial orders for property settlement up to 24 months from the date of your separation. There is separate legislation covering de facto relationships and we can provide you with advice and assistance in that regard.

We can offer further advice on how a divorce may affect the operation of your current Will and other issues such as renting and your legal rights and child support issues.

If you choose to consider a Binding Financial Agreement as opposed to a court order there are strict requirements attached to this

For example each party is required to obtain independent legal advice about the effects of the Binding Financial Agreement including their rights and the pros and cons of entering into the agreement.

One party's lawyer will draw up a draft of the agreement and the other party's lawyer will review this. When both parties agree on the contents of the document the lawyers must sign a statement that their advice has been provided and the parties sign the agreement. Are there any risks with this type of agreement? Yes, if any of the requirements are not complied with by either party it will not prevent a

party from making application to the court for property settlement, so it will not necessarily finalise the matter. It is easier to set aside a Binding Financial Agreement than a Court Order. Our preference is to seek Court Orders which will finalise the matter once and for all. BFAs may be set aside for reasons such as one party defrauding the other or acting unconscionably in entering into the agreement or if a material change has occurred with respect to the care, welfare or development of a child of the relationship since the agreement was made.

BFAs are often referred to as pre-nuptial agreements and can be entered into prior to marriage or a relationship, during a marriage or de facto relationship or after a breakdown in a marriage or relationship. These agreements are not appropriate in every situation and we will assist you to make a decision as to whether it will be appropriate for your particular situation.

This type of agreement will set out how your property will be divided should you separate. This will include all assets as detailed for property settlement.

Such agreements may be more appropriate than the usual property settlement through the Courts in the following circumstances:

- • One person has more property than the other at the beginning of the relationship including residential, farms, businesses
- • One person may receive or soon be entitled to a large inheritance or gift/lottery winnings
- • Children from former relationships may require financial protection
- • Both parties do not wish to have court involvement and ensure the terms of property division are agreed up front
- • May exclude certain assets from being included

You may also be entitled to seek orders for Spousal Maintenance to support your living expenses following separation but generally this only extends for a period of, at most two years.

Property settlement is separate from children's issues and refers to the division of assets accumulated throughout the relationship

Property includes all assets and financial resources, either jointly or individually held such as real estate, motor vehicles, furniture, bank accounts, businesses, shares, collections such as artwork or coins, other investments, antiques, superannuation, pension entitlements and anything else with a monetary value such as compensation claims and long service leave entitlements.

You can apply for property settlement at any time after separation and do not have to wait until you obtain a divorce. In the case of de facto couples you have 24 months from the date of separation to obtain a property settlement.

The first step in the process is to identify and value the asset pool. This includes all assets and debts of both parties, including those which were brought to the relationship initially and those accumulated during the course of the relationship.

There are two main elements in determining entitlements and they are contributions and future need.

Contributions include financial and non-financial as well as separate or special contributions made by either party. These can include a contribution as homemaker and parent to children, inheritances and of course financial contributions.

Future needs can include factors such as responsibility for children after separation, income and employment capacity, age, current health issues and availability of other financial resources.

It is imperative that you formalize property agreements so that one party cannot commence proceedings for a claim in the future. You can formalize the settlement through court orders or via a binding financial agreement. However the better method is through court orders because this can incorporate superannuation splitting orders.

What you must not do in financial proceedings:

- • Not tell the truth about assets or not provide full and frank disclosure of assets and debts
- • Not dispose of assets to deliberately avoid having them included
- • Not conceal assets or attempt to destroy property

There are many misconceptions about property settlement. Here are a few:

- • That property settlement is not necessary unless you own real estate or are paying off a mortgage
- • Your name is not on the Certificate of Title of the former matrimonial home therefore I have no claim to it
- • This is my business and the other party has played no part in running it so they have no entitlement
- • If I leave the former matrimonial home then I will lose my entitlement to claim anything
- • I have the right to keep all and any inheritances and gifts received during the relationship
- • Being a stay at home parent has no value in property settlements

Any order for property settlement also needs to be clearly just and equitable in the eyes of the court. This means that it must be fair to both parties taking into consideration all the factors noted above. We will advise you in clear terms about the court process and what you can expect to receive as a percentage of the net asset pool.

If you do not have a valid Will your assets will be divided up upon your death according to the law and not necessarily according to your wishes

You should always have a valid Will which will support your wishes and limit any stress or anxiety your relatives may go through after your death, including any disputes about inheritances. If you do not leave a valid Will your estate will be distributed according to a fixed formula which is determined by the state government regardless of your situation.

You should be aware that if you divorce your current Will is revoked and will no longer be valid. Conflict may also arise if a family member decides to challenge the terms of a valid Will. If you do not have a valid Will you may cause severe financial and emotional hardship to your family and loved ones if you do not have a professionally prepared Will.

Marriage, separation and divorce trigger legal consequences relevant to estate planning and you should include discussion of your Will in all discussions about relationship matters.

The legal requirements for a valid Will vary from one state to another but the basic requirements are:

- • You must be over 18 years of old and understand the decisions and statements you are making;
- • Your specific wishes must be in writing;
- • Your Will must be signed in the presence of two witnesses

Only assets owned by you will pass to your Estate after death and be controlled by the terms of your Will. Jointly owned assets will pass automatically to the other joint owner after your death and this commonly includes homes, contents of the home(s), bank accounts, personal effects and other jointly owned assets. There is one exception in relation to real estate and that is if you own real estate as tenants in common with one or more other parties. A tenants in common ownership means that each party owns a specific portion of that real estate and this portion must be controlled by each individual party's Will.

Generally assets owned by trusts controlled by you will not become part of your estate, however any shares or units may form part of your estate.

The proceeds of a life insurance policy are paid direct to a nominated beneficiary and do not form party of a deceased estate unless you nominate your estate as the beneficiary. Most often such a policy or the proceeds of superannuation generally pass to a family member who is nominated by you.

Do it yourself will kits are becoming popular but have inherent dangers. You need to seek professional expertise on your particular circumstances to protect your assets and ensure that your beneficiaries receive assets according to your wishes. Unless you obtain accurate legal advice on this issue you may be subject to family inheritance claims, for example, from an estranged child or former partner, and you may risk action from creditors and/or bankruptcy.

Powers of Attorney

A Power of Attorney is a document in which you appoint and authorize one or more people to manage your financial and legal affairs if you become unable or unwilling to do so. You can state when the appointment of that power is to commence operation, provide for limited or unrestricted powers and whether the appointment of multiple attorneys are to act jointly or independently when exercising the power.

An Enduring Power of Attorney simply means that an attorney nominated by you will act for you in the event that you suffer from a mental illness or incapacity to the extent you are no longer able to manage your own affairs.

There are now arrangements in place in South Australia and in some other states of Australia for a power of attorney to extend to medical issues. This is called an Advanced Care Directive and sometimes is referred to as a Living Will and this will direct parties on your wishes as to how medical treatment is to be administered in the event that you are not able to provide your advice. You can complete this document yourself by going to the government web address here or we can assist you and provide advice and support in completing this process.

If you have children and are having difficulties with trying to resolve issues with your ex-partner you may qualify for Legal Aid.

In some circumstances, if you are purchasing your own home and have limited equity you may still qualify for legal aid but the Legal Services Commission may place a charge on your home. This means that if the home is ever sold the Legal Services Commission will recover any funding they have provided for your family law matters from the proceeds of sale.

If you are on a reduced income, work part time or are in receipt of a Centrelink benefit we can assist you to apply for Legal Aid and explain the process to you.

You need to provide information about your own finances as well as any income from any other person living with you or what is referred to as a “financially associated person”. This could be anyone who is in a position to pay your legal fees such as parents or other family members.

You also need to provide “proof of means” which consists of bank statements for the last two months a Centrelink Income Statement which you can access on-line, payslips for the last four weeks if you are working and if self-employed, your last tax return and profit and loss statement.

You are also required to notify your lawyer and the Legal Services Commission if any of your circumstances change and that includes change of details such as address and also if you gain employment during the course of your matter.

You will usually be expected to make a cash contribution to us when your Legal Aid is granted. This can vary from $50 up to several hundred dollars depending on your assets. We will collect this contribution prior to commencing any work for you.

Come in and see us for your free first interview. During that interview we will further explain the process of applying for aid, what sort of aid might be approved and where we go from there.

Address Info

- ***Adelaide Family Lawyers***
  95 Halifax Street, Adelaide SA 5000
  Telephone: (08)8227 0519
  FAX: (08)8227 2878
  E-mail: admin@adelaidefamilylawyers.com.au
  Website: www.adelaidefamilylawyers.com.au