

A tough Christmas

It is a sad reality of Family Law that many couples decide to separate during the festive season. Any person who finds him or herself facing separation over these holidays does not need to panic about their legal rights. Firstly, lawyers can usually still be contacted. In any case, the following points should be noted, for you or those you are helping in this time.

Children

It is important that in the event of a separation, a parent does not walk out in dismay and leave the children behind. A parent who leaves their children with the other partner for any length of time during separation will find it difficult to go back to being primary carer later on if the other partner can demonstrate that they can adequately care for the children on their own.

Finances

In the absence of any court order made, the general rule is "What's yours is mine, and what's mine is yours." This means that both partners may continue to withdraw money from the bank accounts they have access to, if they wish. In other words, if you really need the money in the short term, or want to prevent it from "disappearing", you can "take the lot." This is especially welcome news to those without an income.

Any money that is withdrawn from bank accounts following separation will be taken into account in any future settlement.

In the meantime, if necessary, we can apply for an urgent court order to recover money surreptitiously removed—especially if it represents a large proportion of the total asset pool.

Fear of violence

If the other party is violent or threatening, an Intervention Order should be sought to prevent the violent party from approaching or behaving in a way that makes the other party feel unsafe. An application for an Intervention Order can be made at any Magistrates' Court location in Victoria (including Neighbourhood Justice Centres).

Emergency Magistrates are available throughout the holidays to hear these applications.

For a list of Court locations, see <http://www.magistratescourt.vic.gov.au/find/court+locations/>

An even better option is to speak to the police at any local police station who can assist and apply for an Intervention Order on a person's behalf. They are obviously available at all times.

Other emergencies

Similarly, Emergency Federal Magistrates will be available to handle urgent parenting matters. Generally these matters are restricted to situations where there is a risk of a child being removed from Australia. The Magistrates' Court after hours service can be contacted on 1300 352 000. Ordinarily, the children would need passports to leave Australia, therefore this situation can often be prevented by hiding any relevant passports. If there is a risk of using a foreign passport which you cannot 'secure', go to the emergency court service for help to stop them leaving!

Contacting us

We only close from December 23 to January 2 and re-open with a full team on January 3, 2012. Call us with all your family law questions.

The Moores Legal Family Law team

We have a range of practitioners who are able to assist with any minor queries or major issues you may have. If you require further information, please contact a member of our team.

Moores Legal is a law firm servicing companies and businesses, Not for Profit organisations and individuals across Melbourne in the areas of Commercial Law, Workplace Relations, Property & Construction Law, Not for Profit Law, Aged Care, Elder Law, Estate Planning, Superannuation & Structuring, Dispute Resolution, Family Law and Personal Injury Law.

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DISCLAIMER: This Family Law Briefing is of a general nature only. Specific legal advice should be sought rather than relying on this Briefing.

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