



10 common family law myths

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One of the most interesting parts of my job is hearing all sorts of things that people believe to be true about family law and of course, setting the record straight. In this article, we look to dispel the most common family law myths and provide truth and transparency around how the system works in practice.

Well meaning friends and family provide invaluable support during a difficult period but they can sometimes complicate things by sharing incorrect information and perpetuating long held myths about the family law. Similarly, while the internet can be a useful resource, there's a lot of information out there that is, put simply: wrong.

It is important to [get advice early](#) so that you know where you stand and what the next steps are.

Our top 10 most common family law myths and the truth behind them

1. I am automatically entitled to 50/50 custody of the kids

The law can sometimes be confusing around the issue of “custody” but one thing is clear, there is no automatic presumption that children should spend equal time with each parent. The most important thing to consider is what is in [the best interests of the child](#). There are several factors that are relevant here. Importantly, parents do not have entitlements – they have obligations.

2. I've been in a de facto relationship for 2 years – the assets get split 50/50 right?

No, they do not.

I have had so many calls over the years from panicked clients worried that the two year mark is approaching and that their partner will then be entitled to claim half of their assets. It's simply not the case and being in a de facto relationship with someone does not automatically result in an equal (or even close to equal) split of assets.

For more information about how property settlement actually works, visit our blog [“How are assets divided after separation or divorce?”](#)

3. My partner cheated on me so I get more of the assets!

The family law system in Australia is a no-fault system and has been this way since the 1970s. Although sometimes this may seem unfair, the rationale is that property, parenting and divorce matters can be settled more appropriately where blame is not being apportioned.

4. We can't commence property settlement until we get divorced

Not true.

In fact, you can't [get divorced](#) until you have been separated for 12 months. In most cases, we recommend that you resolve property matters before you get divorced as strict time limits apply after divorce (that is, following the granting of a divorce order).

Our property settlement lawyers are able to assist you in relation to negotiating and finalising property matters to ensure your interests are protected [both now and in the future](#).

5. We have separated – one of us has to move out right?

There is no obligation for either party to move out of the family home following separation. There are some exceptions – most importantly where there is [family violence](#).

In cases where there is no violence, separated parties may [live together separated under the one roof](#). This isn't always ideal or healthy so, if you decide you want to move out, [seek advice](#) about your options and what this means for you before you make any firm plans.

6. I'm not entitled to any of my former partner's superannuation

Superannuation is an asset that can and is often divided in family law matters. If one party worked during the relationship and the other party stayed home to look after children or worked less, then in most cases super will be adjusted (referred to as superannuation splitting) to ensure that both

parties end up with similar super amounts.

7. My kids can decide where they want to live

Under the family law, the wishes of the children will often be taken into consideration but the child's specific wishes are not the determining factor for whom they will live with after separation.

How much weight is given to the wishes of a child will depend on their age and maturity and other factors to be considered. Generally speaking, children do not, and should not, have the pressure of deciding where they want to live.

8. We have agreed between us about property settlement and signed a stat dec – that's enough right?

No.

A statutory declaration is not a legally binding and enforceable family law settlement. It is important to [make your agreement legal](#) to avoid further claims down the track.

9. Going to court is the best option to protect my interests after separation

Except in specific circumstances, going to court should be the last option.

There is so much benefit to [settling a matter out of court](#) including saving money on legal fees, preserving relationships, reducing stress and getting it done quicker.

You can learn more about amicable arrangements in our blog

["Top 5 tips for an amicable property settlement"](#)

[The advantages of an amicable separation from your partner](#)

10. Getting a divorce is expensive

This is a common misconception often perpetuated by the family law system and lawyers who promote arguments over settlements.

There are many lawyers who work hard to achieve amicable out of court settlements for their clients and to keep costs down. Staying out of court will help to keep costs down and reduce stress related to your family law matter.

How can we help?

At Emera Family Law, our aim is to work with you to help get you to a better place after the breakdown of a relationship. Our lawyers are highly skilled and experienced and importantly, our emphasis is on negotiation, not litigation.

You can take advantage of our 'first free consultation' by calling [03 9006 8907](tel:0390068907).

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.