



PLAIN ENGLISH GUIDE

FAMILY LAW DISPUTES GOING TO COURT

This guide sets out basic information and procedures about going to the Family Court of Australia about a property dispute, and issues concerning children under the Family Law Act. It does not cover matters that involve divorce, maintenance, child support or urgent matters. Please contact Commins Hendriks at any time if you have specific concerns regarding a family law matter, and we can advise you.

How can Commins Hendriks help you?

Many people are able to resolve any disputes that have with their partner when their relationships break down themselves. If you need help with your negotiations Commins Hendriks can certainly provide you with some guidance as to how to best resolve your negotiations, and if necessary, negotiate for you.

However, if you can't resolve the situation yourself, or if your negotiations have failed, or if the situation is urgent, you may need to go to court to resolve the problem.

The court process:

In most cases the first thing you will do is attend an information session and then a case conference.

➤ Information session:

The information session is a group session with other people involved in similar disputes to you. Court officers will talk to you about the procedure, and you will watch a short video presentation on the court and how it works. Your lawyer does not need to be there for this session, but you can take a friend or relative with you.

➤ Case Conference:

After the information session, you will have a case conference. Your lawyer should be there for the case conference. If your dispute is about children then the case conference will be with a Court mediator. If your dispute is about property settlement you will meet with a court registrar who is a legally qualified officer of the court, If you are having a dispute about children and property, the court will normally have both a registrar and a mediator available for you.

The purpose of the case conference is for the court to have an early look at your problem, and work out the best way to help you resolve it. Sometimes an agreement can be reached at this stage if your problem contains only a few issues.

If it is not solved at this stage, in a property dispute, the registrar will make directions as to what happens next. Normally the registrar will adjourn the matter to a conciliation conference and he will ask the parties to provide each other with certain documents and valuations so that next time you meet you can take things further.

In a children's case, you will usually have a few meetings with the family court mediator.

➤ Mediation

Mediation is compulsory in matters concerning children. Mediation takes place in the early stages of the dispute, and aims to help you to come to a resolution of the problems. Mediation is confidential so that you can feel free to try to work out the problems. Nothing you say in this stage of mediation can ever be used in court later on.



At a later stage in the proceedings the court may order you to go back to a mediator and to have them prepare what is called a Family Report. This will not be the same mediator you saw before so that your confidentiality is maintained.

Meetings at this stage are NOT confidential. The purpose of these meetings is for the mediator to prepare a report which will go to court, the judge will read it, and it will help to decide your matter. As such the report can be very important in deciding your matter.

To prepare the report the mediator will meet with each of the parties, and any other significant adults in the child's life, for example grandparents. They will also meet with the child, and observe each of the parties with the child.

If you cannot reach agreement at mediation, then your case will proceed to trial.

➤ Conciliation Conferences

You will probably attend a conciliation conference if your case involves property disputes. You will attend this conference with your lawyer, and it will probably take at least 1½ hours. The purpose of this conference is to try to reach an agreement.

What usually happens is that the registrar will speak first to the lawyers to find out what the case is about, what is in dispute and what is being proposed by each side to settle the matter. The registrar will then meet with both parties without their lawyers and they will explain the benefits of settling the matter and discuss how you might come to an agreement between the two of you. It is likely that the registrar will express an opinion as to the outcome of the proceedings.

You are more likely to reach an agreement at the conciliation conference if you are prepared, and acquire all of the relevant paperwork and valuations as suggested by your lawyer.

If you are able to reach agreement at conciliation, then in simple matters the registrar will draw up orders for you on the day and everything will be settled that day. If your matter is more complex, or if there is not enough time, then consent orders can be filed after the conference.

If you cannot reach agreement then your case will proceed to trial.

➤ Preparing for a Trial

Trials are the part in proceedings where you will start to incur large legal costs, so it is very important to make every effort to settle before it gets to trial. The following is an indication of the kind of work required for a trial:

- Detailed affidavits will have to be prepared setting out your evidence, as well as that of any witnesses you may wish to call.
- Valuations will need to be obtained in property matters
- A family report is likely to be required for children's proceedings
- You may need to issue subpoenas for documents for the purposes of your case
- You may need to instruct a barrister to represent you at trial. If so, you will need to meet with them before hand to discuss your case.
- You may need to go through what is know as 'discovery' where you need to provide a list of all documentation you have in your possession and make that documentation available for the other side to inspect.

➤ The Trial

On the day of the trial you will attend court with your lawyer. A judge or another court officer will hear your case.

The person making the application (the applicant) will go first- their lawyer will state what the case is about, and the judge will then read all of the affidavits and other documents in evidence. The applicant and the applicant's witnesses will then go into the witness box to be cross-



Examined by the other side (the respondent). The respondent and their witnesses will then do the same. After this is finished the lawyers for each party will make submission to the judge about how they feel the matter should be decided.

The judge can either make orders on the day or adjourn the case and give their orders another time.

Sometimes in busy lists there are too many cases for the judges to hear in one day, and you case may be 'not reached'. If this happens you will have to go away and come back another day. On the day you come back your case will be given priority.

➤ Appeal

If you are not happy with the outcome of your case then you can appeal. How this is done will depend on how your case was heard, and your lawyer can advise you as to how to go about appealing and also as to your prospects of success.

The Federal Magistrates Court

Not all family law cases are heard by the Family Court of Australia. The Federal Magistrates court hears some of the less complicated matters. This is because they are generally faster and cheaper than the Family Court. The procedures are different from those outlined above and your lawyer can explain these procedures to you.