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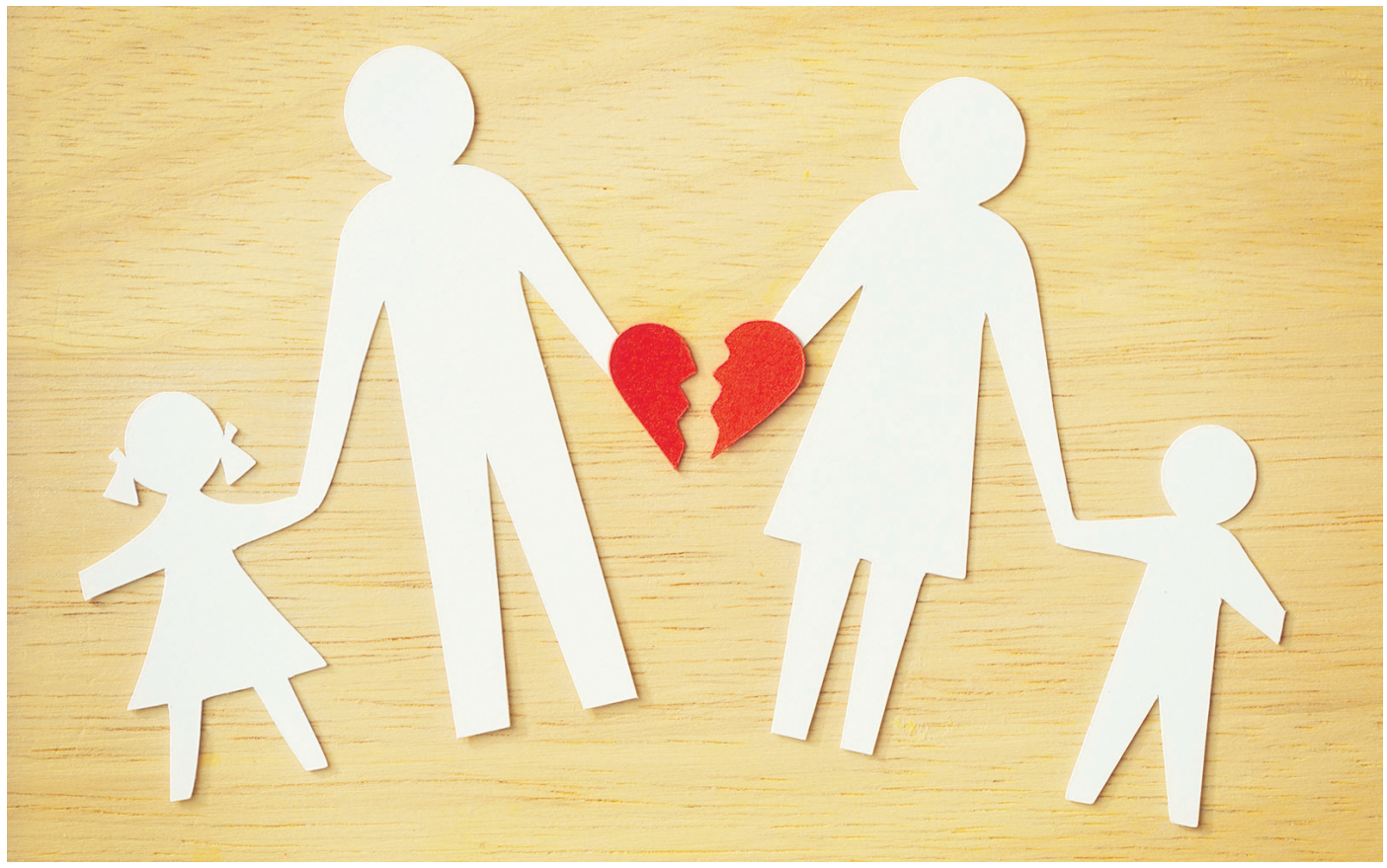
PROMOTIONAL FEATURE

Part two of the do's and don't's of separation

In his second instalment of a two-part series, family lawyer and partner at **Schetzer Papaleo Family Lawyers Daniel Myers** shares part two of his checklist of do's and don't's when navigating a separation.



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THIS checklist compiles issues I encounter in everyday family law practice, aiming to assist anyone thinking about, or going through, a separation. I've drawn on my experience across the full spectrum of family law disputes: from the most amicable of spouses who remain civil and just want to finalise an agreement, through to significant court battles about the division of assets, parenting arrangements, or both. It also includes my reflections from a national conference I recently attended in Byron Bay with the Australian Institute of Family Lawyers, Arbitrators & Mediators about the ways that lawyers and mediators can help clients to reach resolutions outside court in a more dignified and satisfactory manner.

DO understand your psychological environment before making key decisions. For example, the concept of "mentalising" refers to the human ability to perceive and reason about the intention, beliefs and psychological disposition of oneself and others. For example, attributing a mental state to a person's facially expressed sadness in order to infer their need to be comforted.

Studies have shown that when a person feels anxiety about their relationships with loved ones (known as attachment-related stress) they make judgments about important decisions faster, but at the cost of more errors, i.e. they have more reflexive, "jumping to conclusion" responses (brain mechanisms underlying the impact of attachment-related stress on social cognition: Nolte, Bolling, Hudac, Fonagy, Mayes, & Pelphrey (2013)). Thus, when one experiences interpersonal stress which activates the attachment system, the capacity to understand someone else's mental state may be reduced, distorted and less flexible, potentially corresponding to reduced attention to social cues.

Daniel Myers.

In the context of a separation, a skilled lawyer or mediator can mitigate against these neurological impulses by assisting parties to reduce their tendency for dogmatic thinking or reducing to stereotypes, improving tolerance for ambiguity, and refrain from making judgments based only on early information, and to take subsequent information into account (known as knowledge flexibility).

DON'T get so caught up in detail that you can't see the forest for the trees. Focusing on the big picture will help you work out your priorities and put issues of lower importance into perspective. It is also necessary to ensure that you can articulate and communicate your case appropriately to the key stakeholders in a dispute (e.g. a mediator, family consultant or the court). They can only make sense of any underlying historical detail and minor issues if your case is first presented to them in a succinct way which captures the broader "story" of a family and the real issues in dispute.

DO get legally binding consent orders to finalise your property settlement to ensure that if you ever need to rely on them in court, they will stand up. Consent orders ensure a clean break of property so that new assets acquired can't be touched by the other person in future. Without a properly finalised agreement, it's possible for a former partner to make a claim through the courts, even at a much later date. A simple statutory declaration may seem a good alternative at the time, but will hold little weight in court if circumstances change. It's also important that orders accurately reflect the intended terms of an agreement. Given the legal jargon involved, this is an easy trap for the layperson to fall into, however once orders are finalised it can be near impossible to go back and correct any errors.

DON'T be afraid of court, in the right circumstances. All things being equal, going to court is the place of last resort, when every other avenue has failed. There is good reason for this: cases that go through all the way through the court system are very costly, stressful and unpredictable. In practice, however, about 95 per cent cases that start the court process resolve before a final hearing, often after the court-ordered mediation that occurs well before a trial. When faced with a recalcitrant other party who is content to ignore all attempts at a settlement or just generally string out the process, issuing court proceedings can "rip off the band aid". Although court has disadvantages, it does ultimately guarantee a final outcome and will force the other party to engage in the dispute. The prospect of court litigation itself often hastens a quicker settlement than forever going around in circles through a voluntary process.

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