



## Dealing with the Financial Challenges upon Separation or Divorce

The end of a relationship can be an emotional and traumatic time. You may feel anxious or overwhelmed about such a big change in your life. If you and your spouse/partner (including same-sex partners) have separated, you will no doubt be wondering how you will divide up your property and other financial assets. Be kind to yourself and ask for support if you need it as there is help available.

We have a number of clients who have come to us seeking answers during this extremely difficult time in their lives - from these experiences we've developed this guide to help steer you in the right direction and give you confidence during what can be a very stressful period.

### Seek advice early | gathering your team

If you are going through a relationship breakdown, it's important to seek good advice early in the process. Property and financial matters can be settled immediately upon separation, so couples who are married do not need to wait until they are divorced. The two areas you should seek help with are:

#### 1. Legal advice

A specialist family lawyer will be able to help you understand your rights and responsibilities and can explain the law that applies to your case. They can also help you and your former spouse/partner reach an agreement without needing to go to court.

You and your former spouse/partner may have already come to an agreement about how you wish to deal with your property and financial assets, and may simply require legal advice about the terms of the agreement and how you may go about formalising it so that it is legally binding and enforceable.

Conversely, there may be factors such as violence or hostility which mean that it is difficult or inappropriate for you to communicate directly with your former spouse/partner about negotiating a property settlement. Your lawyer can discuss with you the best approach in both of these situations.

#### 2. Financial advice

If your former spouse/partner was the one who took care of the money, you will need to find out how things were organised and decide how you want to manage your finances moving forward. Seeking some financial advice in these circumstances is a good start.

On more than one occasion, clients have told us they wish they'd sought the support and guidance of financial advice earlier in the separation process. It's important to have sound legal advice but it's crucial to decide what mix of assets will best secure your financial future. Getting financial advice early in the property settlement negotiations is a smart move.

A financial adviser can help you focus on setting yourself up for the future and tackling the longer term money issues, but here are some things you can do immediately to protect your finances:

- **Close off your joint accounts -** Consider closing any joint accounts. Talk to your bank to establish your own account with your own pool of money, and make sure the other joint account holder can't access it. Check that your pay is going into this account.
- **Do a financial stocktake -** List all your assets and their approximate values, and any debts or joint debts in your name.
- **Record your turning points -** Note down the dates of your separation in a diary or notepad. You can use this when you apply for a divorce as proof that you have been separated for at least 12 months.

- **Cancel your loan redraw facility**
  - Talk to your bank to cancel any redraw facility on your home loan to make sure your debts don't grow.
- **Update your rental agreement** - If your name is on the lease then you are liable for any unpaid rent or damage caused by your partner.
- **Update your utility bills** - If your name is on the account then you are liable for any unpaid bill.
- **Seek guidance with your investment portfolio**

If you hold, or have some ownership in, any investments like a share portfolio, an investment property, or a self-managed superannuation fund, it would be worthwhile checking in with your financial adviser in the short term to ensure it continues to meet your needs.

## Adjusting to a change in income – how are you going to make ends meet?

Your income and expenses are likely to change when a relationship ends. It's more important than ever to make sure you have a good idea of where your money comes from and where it goes. Here are three important steps to get started.

- **Create a new budget**

Prepare a new budget based on your changed income and expenses. Start by writing down all your income and expenses, and then work out what's essential and what could be cut back – there are a number of online budgeting tools that can help you with this task. Cutting down on unnecessary expenses each week can make a big difference over time.
- **Gather your financial information**

If you're not used to managing your money, getting all your key financial documents together is an important first step. Find and organise your:

  - Savings and transaction account statements

- Utility bills (e.g. electricity, gas, mobile and internet)
- Credit and store cards bills
- Property paperwork (deeds, mortgage papers, home loan details)
- Investment paperwork (managed fund statements, share dividend statements)
- Superannuation accounts (both yours and your ex-spouse/partners)
- Tax records (tax returns and tax file numbers)
- Details of any family trust or company and any assets they hold
- Insurance policies (e.g. health, home and contents, car, income protection and life)
- Will and estate plans
- Contact details for your accountant and lawyer

- **Plan for your financial future**

It's never too early to prepare for your financial future, so before sorting out any financial settlement with your former spouse/partner, it's worthwhile getting some idea of how you're going to afford your short, medium and longer term goals and how much you'll need to invest. Your financial adviser will be able to prepare an initial financial plan and assist you with growing an investment portfolio which meets your specific objectives.

## Other important considerations

There will also be a need to make some immediate decisions about practical issues concerning your children and your assets. You may not be able to agree on all these things at the time of separation, but it can greatly help you and your family if you try to reach a temporary agreement.

Some of the things you need to consider are:

- Where your children live and who will take care of them
- How you and your former spouse/partner will support yourselves and your children
- What, how and when you will tell the children, other family members and friends
- Who will pay outstanding bills or debts
- Who will stay in the house
- How will the rent or mortgage be paid
- What will happen to any joint bank, building society or credit union accounts
- What will happen to the house, car, furniture and other property

## Organising your will, insurance and superannuation

Some specific tasks you should look to sort out upon separation or divorce are:

- **Your will** – think about updating your will to reflect the changes in your life as being separated or divorced does not cancel an existing will and different rules apply in each state.
- **Insurance policies** - review your insurance policies including life and temporary & permanent disablement (TPD), and personal income protection and trauma policies, especially if you have children, and policies for the car, and home and contents, to make sure they provide the level of cover you need. You might already have life & TPD and income protection insurance through your super fund, which you may be able to increase if it's not enough. Also, it's important to review your nomination if the beneficiary of your insurance is your ex-spouse/partner.

- **Superannuation** – getting your superannuation sorted after your relationship ends is an important step in planning for your future. Once you separate or get divorced, super is treated as a type of property and can be divided by agreement or by court order. Again it's important to review any benefit nomination if your super has been left to your ex-spouse/partner.

## Agreeing a property settlement – settling out of court or going through the court process

The aim of a property settlement is to finalise the financial relationship between you and your ex-spouse/partner. There are no particular rules or laws that apply to how you must divide your property after separation. Whatever approach you take, it's important not to get stuck on the idea of a percentage entitlement.

It's usually more useful to think of the practical effect of your property settlement - will each of you be able to afford to live somewhere else? Is there a way of keeping the kids in the family home? Keeping perspective can also save you time and money.

Your lawyer will discuss with you the best course of action, which will either involve settling out of court or issuing proceedings and going through the court process.

- **Settling out of court**

Once all relevant financial documents and valuations have been obtained and exchanged, negotiations can commence as to how your assets and liabilities are to be divided between you. This can be achieved by such methods as:

- putting an offer in writing
- a round table conference, or
- mediation.

At a round table conference, both parties and their lawyers meet to try and settle your matter.

Mediation, as the name suggests, involves a mediator who is usually an experienced family lawyer. The mediator will act as a neutral and independent person to try and help the parties come to a resolution.

If an agreement is reached, your lawyer will formalise the agreement in writing so that it is binding and enforceable.

- **Issuing proceedings and the court process**

Most people are able to come to an agreement without asking the court to make any decisions for them. But this won't be possible or appropriate for everyone, for example where one person is refusing to provide important information.

You should discuss with your lawyer any concerns you may have and how best to approach your property settlement. There are no "one size fits all" solutions in family law. If you do ask the court to decide your property issues for you, there is no guarantee of a particular outcome.

This means your lawyer will not be able to tell you exactly what a judge or magistrate will decide in your circumstances. The best he or she can do is to provide you an estimate of a range of possible outcomes.

There is a 4 step process, used by the family court for making decisions about property. The four steps are:

1. Identify and value all the property and debts.
2. Examine the contributions of both parties.
3. Look at the current and likely factors affecting each of the parties.
4. Consider whether the proposed outcome is just and equitable.

The law does not take into account who left the relationship or who blames who for the relationship breakdown.

The first step is to identify and value each item of property and any debts. Anything in either of the parties' names

or in joint names will need to be identified, regardless of how or when it was acquired.

Step two involves the consideration of the contributions of each person. The court takes into account all kinds of contributions, including things such as wages, lottery winnings and gifts, as well as maintaining or improving the home, performing household tasks and caring for children. Contributions may have been made before, during, or after the relationship.

The third step considers the current circumstances of each party and the current and likely factors affecting each of them. For example, how old is each person and does either person have any particular ongoing health needs? How much is each able or likely to earn in the future? What responsibilities does each person have for the care and financial support of children or any other person?

Once the assets and liabilities have been identified, contributions assessed and the current and likely factors affecting each of the parties are taken into account, the court can come up with what it thinks should happen with the property.

Taking each of the previous steps into account, the final step is for the court to consider whether the proposed division of property is just and equitable in the circumstances. It will "step back" and assess the practical effect of any proposed division of the asset pool.

## Time limits on settling property and financial matters

You don't have to wait until your divorce comes through before commencing your property settlement. In fact, the longer you wait the more complicated the financial issues may become.

Property and financial matters can be settled immediately upon separation, so couples who are married do not need to wait until they are divorced.

However, if you and your ex-spouse have already divorced, and have not yet been able to come to an agreement about how your property and financial matters should be settled, you must issue court proceedings within 12 months of the date of your divorce.

For de facto relationships, the time limit in which you must issue court proceedings is two years from the date of separation.

## After the property settlement – what next?

Once you've resolved your property and financial matters and received your fair share of the asset pool, what next?

This is where some careful planning and good financial advice can help enormously by providing help in many areas including:

- Budgeting and cash flow management and ensuring you have enough income to fund your lifestyle

- Assessing how best to structure your financial settlement to provide for your longer term needs
- Advice on any share of a superannuation fund you may have received on settlement
- Investment advice with a focus on capital preservation and generating inflation adjusted returns so your longer term goals can be achieved
- Assessing whether setting up an education trust is worthwhile to fund the children's school fees
- Help with updating your estate plans and any personal risk insurances

It is always important to keep these plans updated on a regular basis so checking in with your financial adviser on a six monthly basis is recommended.

## Summary

Now that you have read through our whitepaper you are hopefully feeling more informed about the road that lies ahead of you. By gathering an appropriate team of advisers you can be confident you are receiving the best possible advice, and by being proactive in collating your financial information you will be well equipped to begin the process of setting yourself up for a strong financial future.

## Success story

**“When my marriage of 17 years ended I was in a very vulnerable position, mainly emotionally, but also with the prospect of how I was going to survive financially. My husband had always managed the family finances and I was really in no state to pick up the reins and manage my share of the divorce settlement. I was introduced to Iain Reid and the team at Cardena Private Wealth and this was just the tonic I needed. Iain took the time to help me cope with my situation first, and then to liaise with the lawyers and accountants in regard to my financial settlement. That was 7 years ago and Iain's guidance and expert advice continues to provide me with security and peace of mind. I am confident my financial well-being is being well looked after today and for my retirement days in the future.”**

*Kaye McColl*  
Armidale, NSW

## Get in touch

Cardena has worked with many clients to achieve successful outcomes after a separation. To speak to an expert adviser please get in touch.

MLC Centre, Level 23.02 19-29 Martin Place Sydney NSW 2000

**T:** +61 2 8016 3200 **E:** info@cardena.com.au

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