



Australian Government
Attorney-General's Department

Separating with debt:

a guide to your legal options



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Foreword



**Senator the Hon
Michaelia Cash**
Attorney-General



**Senator the Hon
Marise Payne**
Minister for Women

Separation and divorce is a difficult time for everyone involved. A key issue for separating couples to navigate is how to divide their property. This includes deciding how to share responsibility for paying off their debts. It is important that responsibility for repaying debts is shared fairly, and according to legal principles. Ensuring fairness can be a particular challenge in cases of financial abuse and family violence.

It is recognised that women may face particular challenges recovering financially after a relationship breakdown and can take longer to financially recover from separation than men. The Government is committed to supporting and enhancing women's safety and economic security. An enhanced understanding of financial processes can help prevent financial abuse, and support women who are experiencing it, particularly during separation.

While we understand separation is often an intensely stressful time, we hope that the information contained in this guide will help to alleviate some of the stressors associated with separation.

This guide, which is funded under the [Fourth Action Plan of the National Plan to Reduce Violence Against Women and their Children 2010-22](#), is designed to provide clear and easy to access information for separating couples about the steps they can take to proactively manage debt in the context of a relationship breakdown. It explains how debts may be treated as part of a family law property split and includes useful information to support separating couples achieve fair, enforceable outcomes about their debts. The guide also provides separating couples with a clearer understanding of the resources and pathways available to assist them in achieving a clean financial break.

The guide is a complement to other family law user guides developed by the Attorney-General's Department, namely:

- [Property and Financial Agreements and Consent Orders – What You Need To Know](#)
- [Parenting orders – What you need to know](#)

We are pleased to introduce this practical resource to support separating couples in making arrangements for their debts in the context of a family law property division.

Senator the Hon Michaelia Cash
Attorney-General

Senator the Hon Marise Payne
Minister for Women



Acknowledgements

This guide has been prepared by the Attorney-General's Department with substantial assistance and drafting by Care and Emma Smallwood. Care is a community organisation that provides free and confidential support to people experiencing financial difficulty, and free legal advice and assistance through its community legal centre, [Care Consumer Law](#). Ms Smallwood is an experienced family law practitioner in the legal assistance sector and authored the [Stepping Stones](#) research report which considered the economic impacts of family violence in family law property matters involving small property pools. The Attorney-General's Department would like to acknowledge and express sincere thanks for the extensive work undertaken, and dedication shown, by Care and Ms Smallwood in developing this guide.

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Introduction

It is common for partners or married couples to share money, manage finances jointly and take out loans together. When relationships break down, it can be difficult and stressful to work out how to separate finances and what to do with debts.

If your relationship has broken down or you are thinking about separating, knowing your financial and legal responsibilities and where to get help is important.

Separating with debt: a guide to your legal options (the guide), sets out information about how debts are dealt with in family law and in consumer credit and debt law after separation.

Dividing your property after separation in family law may mean you seek a property split. You can only deal with debts as part of a family law property split if you were married or in a de facto relationship. See [part three](#) for more information.

The guide will also help you understand your consumer credit and debt law options, including if you should challenge a debt you don't agree with. See [part two](#) for more information.

The guide will connect you with services that can help, including if you are experiencing financial abuse or concerned about your safety. For the contact details of organisations that can help, including organisations that can help with safety, see [Attachment A – Key support and legal assistance services](#).

Some words and terms throughout the guide are defined in a [Glossary](#). The guide provides general information only and is not legal advice. You should contact the legal services referred to in the guide to get legal advice that is tailored to your circumstances.

The guide is a companion to the Attorney-General Department's:

- [Property and Financial Agreements and Consent Orders – What You Need to Know](#) guide; and
- [Parenting orders – What You Need to Know](#) guide.

The Property and Financial Agreements and Consent Orders guide provides information about the different options for resolving property arrangements as part of separation, focussing on information to assist separating couples negotiate and draft clearly written consent orders.

The Parenting orders guide is a practical resource to assist parents with drafting parenting orders. It aims to help separated parents agree on arrangements for their children, and support them to develop workable parenting orders.

ADVICE TAILORED TO YOUR CIRCUMSTANCES

No matter what point in your separation you are at, it is always a good idea to get financial counselling and independent legal advice.

Financial counselling is free and confidential information and advice about debt options and budgeting strategies. Financial counsellors can provide ongoing support for people in financial difficulty, including advocacy with lenders. Financial counsellors don't provide investing or financial planning advice, but they can provide referrals to other services. You can access financial counselling by calling the National Debt Helpline on 1800 007 007 or visiting the [National Debt Helpline website](#).

Independent legal advice is legal advice about your situation, provided to you separately to your ex-partner or any other person involved in the matter. Legal aid commissions, community legal centres, Aboriginal and Torres Strait Islander Legal Services, or the law society in your state or territory provide or can assist you to access legal advice. For information on how to contact these organisations see [Attachment A](#).

Specialist Domestic Violence Units and Health Justice Partnerships are also places you can seek legal advice and other supports safely. You can find a Specialist Domestic Violence Unit or Health Justice Partnership near you on the [Attorney-General's Department's website](#).

SAFETY

If you are experiencing or worried about family or domestic violence, including financial abuse, call [1800RESPECT](#) (1800 737 732) for support.

If there is an immediate threat to your safety or the safety of your children call 000 for police assistance.

Domestic Violence Protection Orders

If you are concerned about your safety, you can contact the police. The police can apply for a Domestic Violence Protection Order (DVPO) on your behalf. You can also apply to your local state or territory court for a DVPO yourself.

A DVPO is a court order that protects a person who is fearful of violence or threats to their safety. Depending on which state or territory you live in, a DVPO may be made against a family member or someone you are (or have previously been) in an intimate relationship with. In most states and territories, family or domestic violence includes financial or economic abuse. A DVPO is not a criminal charge. A DVPO sets out restrictions on the other person's behaviour, so that the person experiencing violence is protected. A breach of this kind of order is a criminal offence.

These orders have different names in each state and territory. You may have heard them referred to as restraining orders, apprehended violence orders (AVO) or intervention orders (FVIO), for example. For more information about DVPOs in your state or territory, you can contact your local legal aid office or community legal centre.

What is financial abuse?

Financial abuse is a form of family or domestic violence.

Like other forms of family or domestic violence, financial abuse is behaviour that is intended to or has the effect of controlling or dominating the life of the victim-survivor. Financial abuse often forms part of a larger pattern of controlling or abusive behaviour and can happen together with other forms of family or domestic violence.

Some examples of behaviour which may be financial abuse include:

- controlling your access to money or financial information
- making you feel scared to access money for normal household expenses
- making you feel scared to talk about finances
- making it difficult for you to work or study
- removing or keeping your property without permission, or threatening to
- disposing of your property without permission or lawful reason
- demanding to know your passwords and PIN numbers
- forcing you to claim or taking your social security benefits
- pressuring you to borrow money
- borrowing money in your name without your knowledge or permission
- forcing you to sign documents, or forging your signature on loan documents
- pressuring you to change your will or transfer money or property to them
- refusing to contribute to family and household expenses
- using your bank accounts or credit cards without your permission
- forcing you to work in a business without proper payment
- forcing you to sign legal documents for the establishment or operation of a business
- intimidating you or your family into handing over money or property

Financial abuse can worsen after separation or it may occur for the first time at separation. Financial abuse can happen to anyone, regardless of gender, age, level of income, or cultural background. Like other forms of intimate partner violence, financial abuse is gendered and the majority of victim-survivors are women.

You are not to blame for financial abuse, it is not your fault. Help is available, call [1800RESPECT](tel:1800737732) (1800 737 732) and the [National Debt Helpline](tel:1800007007) (1800 007 007), for support.

PART ONE:

Thinking about
separating?

Organising your debts
and finances



PART 1

Part one of the guide focuses on the things you might be most concerned about when you are considering separating. In this part, we cover:

- Understanding your financial situation
- Applying for financial hardship
- Managing online and financial safety and security
- Budgeting for separation
- Money traps
- Moving from or staying in the family home

UNDERSTAND YOUR FINANCES

If you are thinking about separating, gathering information about your finances is an important first step. It is important to gather your financial information, including about your shared assets and debts, to have a complete picture of your and your ex-partner's finances.

Assets means your property or possessions and will include things like: superannuation, money in bank accounts, shares and real estate like a unit, house or block of land.

Debts means any money you owe and can include things like credit cards, personal loans, mortgages or money loaned from family or friends.

There are generally two kinds of debts – secured debts and unsecured debts. A secured debt is a loan or a debt that is guaranteed by an asset, such as a car or a house. If you are unable to repay the secured debt, the lender may sell the asset to get their money back. An unsecured debt is not guaranteed by any property and is often for a smaller amount. Credit card debts are a common type of unsecured debt.

Writing it down

To understand your financial situation it is helpful to start by writing down the value of all assets and debts in your name and your partner's name. A blank property pool worksheet is available at the end of this guide at [Attachment B](#) to assist you to complete this task.

First, make a list of all the assets that you and your partner own and their estimated value. This might include: your house/s, cars, superannuation, boat or other vehicles, money in bank accounts, large or valuable household items like furniture or tools, shares and any other assets.

Second, list any debts, including debts owed against these assets. These might include: your mortgage, car loans, credit card debts, personal loans and any other debt.

This will give you an estimated overall household financial position or net property pool.

You will also need to know the income, from all sources, that you and your partner are each receiving.

There might be some gaps in your knowledge at this stage, that's ok. Next, you will start to collect documents to fill these knowledge gaps and support the figures you have written down.

Gathering documents

The next step in understanding your financial situation is to start collecting copies of key financial documents. You should collect financial documents that provide detail about each of the assets and debts you listed in your property pool worksheet, as well as any income source, things like mortgage statements, superannuation statements, pay slips and tax returns. Keep these documents in a dedicated folder or place.

If you are worried about your safety, call [1800RESPECT](#) (1800 737 732) for advice before taking this step.

If it is safe for you to do so, you should get copies of the following documents:

Financial documents

- any notices from your lenders
- bank account statements for all bank accounts
- car registration
- council rates notices
- current statements for any debts
- financial documents relating to small business' (including as a sole trader) that either party operates including business activity statements
- government benefit statements
- home loan or mortgage statements
- insurance policies and payment notices
- investment statements (including shares or dividends)
- loan contracts (such as car loan contracts)
- outstanding bills and utility account details
- property title deed (if you have it)
- service contracts (such as a mobile phone contract)
- superannuation statements and/or superannuation fund details if no statement is available
- tax returns for at least the last three years
- tenancy agreements

This step will be especially important if you are considering leaving the home and will no longer have access to these documents. In this case, you may also consider other important documents you may need, such as:

Personal documents

- birth certificates
- Centrelink or healthcare card
- drivers licence/s
- EFTPOS and credit card/s
- immunisation record/s
- marriage certificate
- medical history or other medical documents
- Medicare card
- passport/s
- prescriptions and any medications
- will and power of attorney

To help you with this task, this list is also provided as a printable checklist at the end of this guide at [Attachment D – Important documents checklist](#).

Access to financial documents

If you do not have access to the financial documents listed above, you should speak with a financial counsellor or lawyer who may be able to help you access them.

If you do not have access to statements for accounts or debts in your own name, you can request copies from your service providers and lenders directly. Generally, you are entitled to copies of your loan documents, such as your credit contract, any notices they have sent you and your loan statements from your lender.

There may be a fee to get copies of some of your documents. If you can't afford to pay the fee, ask that it be waived. If this request is rejected or the lender is refusing to give you a copy or copies of your documents for other reasons, contact the [National Debt Helpline](#) on 1800 007 007 for help.

When you separate and start to negotiate an agreement with your ex-partner, you will need to provide each other with your financial information (including relevant documents), this is known as disclosure. See [part two](#) and [part three](#) for more information.

FINANCIAL HARDSHIP

Financial hardship is a situation where a person experiences difficulty in meeting the repayments on their loans and debts when they are due, for reasons outside of their control. This situation can arise when someone experiences injury or illness, job loss or relationship breakdown.

If you are having trouble paying bills or debts when they are due, let your lender know as soon as possible to see what help may be available. You have a right to request financial hardship assistance (known as a hardship arrangement) from most lenders. Your lender can refuse if they believe you do not have a good reason for your request or that you will not be able to reasonably repay the loan. Some examples of hardship arrangements include:

- lower repayments for a period of time
- a reduced interest rate
- extended deadlines for individual payments or the total time for all payments
- a short-term freeze on repayments (called a moratorium)
- fee waivers for late or missed payments
- a reduced lump sum as a full and final payment for the debt
- debt waivers on compassionate grounds

Tips for requesting a hardship arrangement

- For help requesting a hardship arrangement, call the [National Debt Helpline](#) on 1800 007 007.
- While negotiating a repayment arrangement you should continue to try and pay what you can towards your loan to show the lender you want to maintain the loan in the long run.
- You should provide enough information to show the lender that the hardship arrangement will allow you to pay off the loan, even though it may take more time to do so. This may include information about the cause for hardship (for example relationship breakdown) and information about your current financial situation.
- **You are entitled to request a financial hardship arrangement even if your co-borrower does not agree or cannot be contacted.** This means, where your ex-partner is refusing to make loan payments or agree to hardship arrangements, the lender can still agree to a financial hardship arrangement with you.
- If you are concerned about your safety, you can ask your lender not to tell your ex-partner about the hardship arrangement.
- You can apply for hardship arrangements multiple times.
- Many organisations, such as schools, body corporates and local councils are not required to consider or respond to financial hardship requests as they are not bound by the National Credit Law. However, some of these organisations may have a policy that sets out if any support is provided and the process to follow. You can check the website of the organisation or ask them directly. The [National Debt Helpline](#) can also help you manage these debts.

Financial hardship because I could never afford to pay the loan

Sometimes people experience financial hardship because they are given a loan, or additional credit, which they could not afford to repay from the outset. If you think this applies to you, you should get legal advice or contact the [National Debt Helpline](#) urgently. See [part two](#) for more detail.

MANAGING ONLINE AND FINANCIAL SAFETY AND SECURITY

When you separate or are thinking of separating, it is important to make sure that you have access to your money and that your finances and safety are protected. This is really important if you are experiencing or concerned about family or domestic violence.

Contact [1800RESPECT](https://www.1800respect.org.au) (1800 737 732) or go to the [eSafety Women website](https://www.esafetywomen.org.au) for help making an online safety plan.

If you are still living with your partner or ex-partner, consider taking the following steps to protect your online safety:

- **Use a safe device that your partner does not have access to, such as a public computer in a library or friend's device to make a plan.**
- **Set up a new email account on a safe device that only you can access.**
 - Use this email for safety planning, to set up new bank accounts and contact utilities and/or government agencies like Centrelink. Do not include your real name in this email address.
 - Tell your lenders about your new email address and request that they do not disclose this information to your partner or ex-partner.
- **Change all your passwords as soon as you can.**
 - Make sure your email passwords, PIN, security question/s and other information which might compromise your financial security or online identity are only known by you.
 - If possible, also change your mobile phone number and add two factor authentication to all your accounts.
- **Do not use saved passwords to access your accounts.**
- **Leave your device at home or turn off GPS if you think your partner is tracking your location.**
 - This is particularly important if you are going to a support agency, seeing a lawyer or going to the police.
- **Check your children's phones and turn off their GPS.**
- Sign out of your accounts when you finish using them, don't just close the window.
- **Use private or incognito mode when browsing online so your browser history won't be recorded.**
- **Install anti-virus software on your devices.**
- Think about what you can post safely to social media, and turn your accounts to private mode.
 - Avoid tagging your location, and ask friends not to post photos of you.
See the [eSafety Social Media Checklist](#) or the [Checklist for friends and family](#) for more information.

These steps have been adapted from the domestic violence online safety checklist available on the [eSafety Women website](https://www.esafetywomen.org.au), see the website for further information.

If you have separated or are thinking of separating, you may also want to consider taking these steps to protect your finances and safety:

- **Set up a bank account in your own name if you do not have one already.**
 - Make sure your wages and/or Centrelink payments are paid into this account.
 - This is particularly important if you are experiencing financial abuse. You may want to consider using a new bank entirely depending on your level of risk.
- **Close any joint accounts.**
 - Make arrangements with your bank to close joint accounts. If you are unable to do this right away, because this would create a safety risk or there is a significant sum of money in the account (the split of which is yet to be determined), ask the bank to confirm in writing that you and your ex-partner must both give approval to withdraw money.
- **Cancel secondary cards attached to your account.**
- **Remove your name from household bills.**
 - **Remove your name from utility bills if you have moved out of the family home.** Utilities are services supplied to your home like electricity, gas and water.
- **Check credit card or loan statements that might give away your location.**
 - eTag, eToll and public transport cards which your partner can access may give away your location. Remove these accounts from joint accounts.
- **Search online for your name and phone number.**
 - If you find information which should be private, ask the website to remove it. See the [Office of the Australian Information Commissioner](#) for more details about your online privacy rights.
- **Talk to your lender.**
 - Notify your lender of relationship breakdown and any family or domestic violence you are experiencing (if you feel safe and comfortable to do so) at an early stage. Depending on your lender, this should mean they apply financial hardship and/or family or domestic violence policies to decisions they make about your accounts and services.
- **Get a new phone and if necessary, a new number.**
 - Do not install your information from your old phone's back up in case any spyware transfers to your new phone. Ask a financial counsellor or a family or domestic violence worker about programs to help you afford a new phone.
- **De-register other devices.**
- **Provide government agencies, banks and your children's school, childcare or sporting clubs with copies of any domestic violence protection orders (DVPO) in place and ask them to confirm in writing that your details will not be shared with your ex-partner.**

It's important to trust your own judgement. If you think your partner has access to your online information or is keeping you under surveillance, change your passwords and seek help.

To get more information about technology safety, check out:

- The [Women's Technology Safety & Privacy Toolkit](#) which is a resource designed to help women experiencing or at risk of technology-facilitated abuse.
- The [eSafety Women website](#) resources to support safe use of technology including online banking websites.

BUDGETING FOR SEPARATION

For most couples, separation results in a change of financial circumstances. This can cause significant financial hardship for some people. It may mean that you need to take on new debts, that you have additional expenses or that you simply can't afford things which used to be affordable when you had a joint family budget.

Personal budgeting is a useful tool to help you adjust to new circumstances. It can help you plan to meet your and your children's basic needs such as housing, food, utilities, transport, phone, health needs, and schooling expenses. Before, or at, separation you can plan a budget; taking into account the expected changes to income and expenses of your household. You can speak with a financial counsellor to help you do this, or you can access one of the many useful online budgeting resources. The [Money Smart Budget Planner](#) is a good place to start.

Other financial assistance options

As well as asking your lenders for a financial hardship arrangement and setting up a new budget (including reducing expenses where possible), you may be eligible for certain types of financial assistance. This can help you with any financial hardship you may be experiencing.

Some types of financial assistance options you may be able to access include:

- **Grants for people escaping family or domestic violence** – Some states and territories have grants available for people leaving an abusive relationship. This can assist with the cost of setting up a new home and other expenses. Call the [National Debt Helpline](#) on 1800 007 007 for more information.
- **Emergency relief services** – In all states and territories, emergency programs are available for people experiencing financial hardship and struggling to pay for basic necessities including food, medicines and other urgent needs.
- **Centrelink advance payment** – Generally anyone who is entitled to receive Centrelink payments can get an advance on their payment. You can opt to repay an advance payment or have the amount deducted from your future payments. You can also apply for a Centrelink Crisis Payment in some circumstances.
- **No and low interest loans** – You may be eligible for a loan up to \$1,500 to pay for essential goods and services like a fridge, car repairs or medical procedures if you have a Healthcare card or an annual income below \$45,000. If you have left an abusive relationship, you may be eligible for a no interest loan even if you earn above \$45,000. You may also be eligible for a low interest loan. Call the [National Debt Helpline](#) on 1800 007 007 or visit the Good Shepherd website to see what [no interest](#) and [low interest loans](#) may be available in your state or territory.

MONEY TRAPS

There are some types of debt or borrowing that can be appealing if you need money quickly, are struggling to pay your bills, or cannot afford to buy a product outright.

These can end up costing you more in the long run. They include:

Payday loans

If you are struggling to pay your bills you may be tempted by a 'payday loan'. A payday loan or 'Small Amount Credit Contract' is a loan of up to \$2,000 that you have between 16 days and 1 year to repay. Lenders are not allowed to charge interest for payday loans, however they can charge other fees which mean you can end up paying back a lot more than you borrowed.

Payday loans are very expensive. Talk to a financial counsellor about other options before you take on this type of loan. You should also consider a No Interest Loan or the other options described above instead of a payday loan.

The [Money Smart Payday loan calculator](#) can be used to show you how much a payday loan will cost in total.

Consumer leases

Another option that may be appealing when you are in financial difficulty are consumer leases. Consumer leases let you rent a household item like a fridge, laptop or TV for weekly or fortnightly payments. You can also get a consumer lease for a car.

A consumer lease may look cheaper than buying the item outright, as you need much less money up front, but it's important to remember your legal obligations will continue over time and costs will also build up over time. Unlike something you pay for upfront, you may not even own the item at the end of the lease after you have paid all the money.

Talk to a financial counsellor about your options, such as applying for a No Interest Loan to buy the item outright.

STAYING IN THE FAMILY HOME

For couples that share a home together, separation often raises the difficult question of who, if anyone, stays in the family home.

Renting

If you and your ex-partner rent your home, you will need to decide who will remain in the home and contact your landlord to discuss your options for transferring the lease.

State and territory consumer protection agencies in fair trading also have guides for tenants who are looking to terminate a lease or who are struggling to make payments. There are special provisions for those seeking to terminate or change a lease in circumstances of family or domestic violence in some states and territories. For more information, you can seek independent legal advice.

If you would like to remain in the home but the other party is making you feel unsafe you can consider seeking a domestic violence protection order (DVPO). A DVPO can contain a condition that prevents the person using family or domestic violence from returning to the home. You can find more information on DVPOs in the [introduction section](#) of this guide or by contacting the legal aid commission in your state or territory.

If you have left the home due to family or domestic violence you may be eligible for a government administered grant for family or domestic violence related relocation and security costs. In some states and territories Victims' Services schemes also provide payment for these costs where there has been an act of violence that comes within the scheme. You can talk to your local family or domestic violence service or seek independent legal advice about your eligibility for Victims of Crime or Victims Services assistance.

Home ownership

If you and/or your ex-partner own the family home there are two questions you will likely have:

- 1) what will happen on a final basis to the home, and;
- 2) what will happen in the interim, while you try to reach a final agreement.

You will need to consider the following:

- Do I want to stay or move from the home (this may also be influenced by safety considerations)?
- Can I afford the mortgage repayments on my own?
- Will my ex-partner need to be 'bought-out' by me, for their share of the home?

(you should get legal advice about how this fits into your overall property split, see [part two](#) for more information)

- Can I afford to 'buy' the other party out, will I be approved for a mortgage on my own and what will that mean for my repayments?

(you should speak to your lender and a financial counsellor to assess this)

Depending on the answers to the above you may need to consider the sale of the family home. You should get family law advice about this process and the division of the proceeds. See [part two](#) for more information about reaching agreement in relation to your property split.

Moving out of the home while you negotiate your property split **does not** impact your legal entitlement to a share of the property.

What happens in the meantime?

While you are negotiating with your ex-partner regarding your property split, you will need to consider your options for housing in the meantime.

Staying in the home in the interim

In most cases you and your ex-partner will be able to reach agreement about who will stay in the house while you work out your final property split.

If you would like to remain in the home but the other party is refusing to leave and making you feel unsafe, you can consider seeking a domestic violence protection order (DVPO). A DVPO can include a condition stopping the other party from returning to the home. Depending on where you live, this type of order may have a different name. You can find more information about DVPOs in the [introduction section](#) of this guide.

If you and your ex-partner cannot agree on who will stay in the home in the interim and there is no DVPO in place, you may be able to apply to the family law courts for an interim order that allows you to have the sole use and occupation of the home. For this type of order, the applicant (you) would need to establish the reason why the order is needed. You should seek legal advice about this type of application prior to making it. For more information about interim orders see [part three](#) below.

You are struggling to meet repayments

It is common that a separating couple will agree that the person who remains in the home (at least in the interim) will continue to pay the bills (for example electricity) and mortgage repayments.

Where you have agreed with your ex-partner you will remain in the home but are having difficulty paying the mortgage, you can discuss hardship arrangements with your lender. For more information about financial hardship arrangements see [part one](#).

If you are unable to reach an agreement with your lender to enter suitable financial hardship arrangements, you may wish to discuss other options with a financial counsellor, such as reducing your repayments to the minimum amount.

You should also get family law legal advice about informing the other party about your circumstances and how taking these steps might impact a final property split.

You can also seek legal advice about possible interim orders that may be appropriate in your circumstances. For example, an order that the other party contribute to mortgage payments. For more information about interim orders see [part three](#).

If separation puts you at risk of homelessness see the [Homelessness Australia](#) website for a list of State and Territory specific housing services, or contact the [National Debt Helpline](#) or the crisis services listed in [Attachment A](#) to seek a referral to your closest specialist housing service.

PART TWO:

Reaching agreement
about property and
financial matters
after separation

PART 2

Part two of the guide focuses on the things you might be most concerned about when you are newly separated and attempting to reach agreement about property and financial matters with your ex-partner. In this part, we cover:

- Challenging a debt you don't agree with
- Some other types of debts and where to get help
- How to reach an agreement with your ex-partner after separation
- Options for finalising your agreement and ensuring your agreement is legally enforceable

CHALLENGING A DEBT YOU DON'T AGREE WITH

When you borrow money, or sign up to pay for a service, you usually sign a contract saying that you agree to repay the debt or money owed on the loan or for the service. If the contract is in your name, it is generally assumed that you understood the nature of the contract and that you would be required to repay the loan or pay for the service.

If you have any doubt about whether you are responsible for a debt, it is important to get legal advice. In particular, get legal advice if any of the following apply to you:

- the debt is not in your name
- the debt is in your name but you did not benefit from the debt (for example a loan for a car in your name that you have never used)
- the debt was never affordable for you
- you have been contacted by a lender or debt collector about a debt you don't recognise
- you did not understand what you were agreeing to when you signed the contract
- you were given false information about what you were agreeing to

In some of these circumstances you may be able to prove that you are not responsible for repaying the debt. If you are unsure, you should get legal advice and/or financial counselling assistance immediately.

An independent and impartial body called the Australian Financial Complaints Authority (AFCA) may also be able to assist in these situations. AFCA provides a service, free to consumers, to resolve their complaints against financial firms. It has the power to make determinations on these complaints that are binding on the financial firm. Before making a complaint to AFCA you should first lodge a complaint with the financial firm's internal dispute resolution service. You can visit the [AFCA website](#) for more detailed information about making a complaint.

How can I challenge a debt I don't agree with?

If the lender refuses to investigate the debt, or insists you must repay the debt, you should seek legal advice.

You can also make a complaint through the lender's Internal Dispute Resolution process or if unsuccessful, to AFCA.

If someone took out a loan in your name without your knowledge or consent, this is a fraudulent loan, and you should notify your lender as soon as possible and consider contacting the police.

A lender can pursue you for a debt for up to **six years** from the last date a repayment was due but not paid, or from the last date you acknowledged responsibility for the debt (by making a payment). If there is a court judgement against you, the lender will have more time to enforce the judgement against you.

Do not acknowledge or make a payment towards a debt that you believe you do not owe – get legal advice as soon as possible.

SCENARIO

DISCOVERING A DEBT YOU DON'T AGREE WITH

Amanda and Tony have been living together in a relationship for five years. They separate and Tony moves into his own apartment. A few months after separation, one of Amanda's friends tells her that it is a good idea to check her credit report once in a while. Amanda checks her credit report and sees a personal loan that she does not recognise. She contacts the bank listed on the report, and she is told that the loan was for a holiday to Bali. Amanda has never been to Bali, but she knows that Tony went with his friends last year.

Amanda tells the bank she did not borrow the money and asks that it be investigated. Amanda also contacts her local legal aid office for free legal advice.

Important!

If you have any doubt about whether you are responsible for a debt, it is very important to get legal advice immediately. Sometimes making a payment, sending an email, or taking other action may have serious consequences and result in you not being able to deny responsibility, even if you know the debt is not owed by you.

What can happen if you challenge a debt you don't agree with?

Under the National Credit Law, lenders are obligated to make sure a loan is 'not unsuitable' for a borrower.

A loan will be unsuitable if it was likely you couldn't repay it, or couldn't do so without substantial hardship at the time the loan was issued, and/or it did not meet your 'requirements and objectives'. To determine whether you can afford to repay a loan, lenders may ask for information such as your bank statements and information about your income, assets, liabilities and expenses, and look at your credit report. These obligations are referred to as the Responsible Lending Obligations (RLOs), and they apply to all lenders covered by the National Credit Law.

If a lender issues you with credit or a loan which was unsuitable for you, the lender may have to take steps to return you to the position you would have been in if the loan had not been approved. This can include:

- declaring part or all of the contract void, which means it cannot be enforced
- changing the contract
- refunding money or returning property, and/or
- paying for loss or damage.

Any benefit you had from the loan may be considered when determining what compensation or remedy you would be entitled to.

The Australian Parliament is currently considering changes to remove Responsible Lending Obligations from the National Credit Law except in the cases of consumer leases and payday loans. If passed, you will still be able to raise concerns about responsible lending breaches for loans issued between 1 July 2010 and the date the new changes come into effect. You will also be able to make complaints to AFCA about whether a loan made after the changes commence has been assessed in accordance with new assessment requirements.

As well as Responsible Lending Obligations, Australian law includes other protections for consumers to protect them from unjust credit contracts or unconscionable conduct by lenders. If a contract is found to be unjust a court may change the contract and declare that a borrower is not responsible for the whole or part of the debt.

If you think this is relevant to your situation, you should seek legal advice. See [Attachment A](#) for contact details.

Important time limits

There are time limits that apply to AFCA complaints which vary depending on the type of complaint.

*If your complaint relates to National Credit Law, AFCA will **generally** consider the complaint if it was submitted to AFCA before the **later** of the following time limits:*

- a) within two years of the date when the credit contract is rescinded, discharged or otherwise comes to an end; or*
- b) where the complainant was given an internal dispute resolution response - within two years after that response.*

AFCA may consider a complaint submitted after this time if AFCA considers that special circumstances apply.

There are different time limits that may apply if your complaint does not relate to the National Credit Law.

If you are unsure about the time limit for your complaint, you can visit the [AFCA website](#) or call AFCA on 1800 931 678.

Challenging a debt you don't agree with before a family law property split

If you have any doubt about whether you are responsible for a debt, like in the examples above, you should seek legal advice from a consumer credit and debt lawyer and consider whether you need to make a complaint to AFCA, before you finalise your family law property split.

AFCA may decide **not** to consider your complaint if there has been a family law property split. This is because it is difficult for AFCA to work out whether you have already been compensated for the loss (caused by the financial firm's breach or conduct in connection with the debt) as part of the family law property split. For this reason, a complaint should be lodged with AFCA, where appropriate in your situation, before a final family law property split is reached.

The specific factors that influence a legal outcome will vary in each case. It is important to get legal advice tailored to your specific circumstances if you think this might apply to you.

OTHER TYPES OF DEBT AND WHERE TO GET HELP

This guide does not cover all types of debt in detail. Below are other types of debt you might need to deal with as part of your separation and where you can go for help.

Child support

Child support payments are generally assessed by [Services Australia](#). Your obligation to financially support your children is ongoing. Your obligation to support your children may be met by directly providing care to your children, or by paying child support, or a combination of both.

Parents can have child support payments collected by Services Australia or they can transfer child support privately between themselves. The Department of Social Services provides a Child Support Guide on their [website](#).

If you are struggling to pay your child support, or are owed child support, you can contact the Services Australia Child Support Enquiry Line on 131 272 or 1800 241 272. You can find more information about child support on the [Services Australia website](#) including the [Services Australia child support estimator](#).

You can also seek independent legal advice about child support. See [Attachment A](#) for contact details.

Small business debts

Small business debts are treated differently to other types of debt covered in this guide. If you are separating and own a business with your ex-partner, you should get legal advice about your responsibility for business debts, including about any personal guarantees you have given. There are also specialist small business financial counsellors who can provide advice and support. They can be contacted through the Small Business Debt Helpline on 1800 413 828.

Tenancy related debts

Tenancy debts can include unpaid rent, costs for property damage and bond disputes.

Residential tenancies are covered by state and territory laws and vary depending on where you live or where the rental property is. Some tenancy laws also include additional rights in situations where there is family or domestic violence. If you are leaving a leased home due to family or domestic violence you may need to act quickly to notify your landlord of the situation to prevent further liability for damages or rental arrears accrued by the person using violence. You can get independent legal advice about your circumstances.

See [Attachment A](#) for contact details.

Utilities and telecommunications debts

Problems with utility debts (water, gas and electricity bills) can arise after a relationship breakdown. This can be especially true where family or domestic violence is present. Some problems might include where:

- one person moves out and the other person is struggling to pay these bills alone
- the bills are all in the name of the person moving out and need to be transferred to the name of the person staying – particularly where an abusive party is moving out and threatening to have services ‘shut off’
- the victim-survivor of family or domestic violence has fled but the bills remain in their name and they need to ensure they stop incurring utility debts for a property they are no longer living in

- there are large and overdue bill/s and decisions need to be made about who will pay after separation

There are consumer protections in relation to utility debts. If you have difficulty paying your bills or are experiencing any of the problems outlined above, you can contact your provider to see what assistance may be available. In most states and territories, utility providers offer financial hardship programs, including programs and protections for people affected by family or domestic violence. For example, you can ask that the provider ensure that an abusive partner is not given your new address and contact details, or be told that you have contacted the provider.

For disputes related to telecommunications, you can contact the Telecommunications Industry Ombudsman (TIO). There are also Energy and/or Water Ombudsman services in each state and territory. Call the [National Debt Helpline](#) on 1800 007 007 for referral to the Energy and/or Water Ombudsman services in your state or territory or for a financial counsellor to speak to your utility company on your behalf.

Fines

Fines, including traffic fines or court fines, are different from other types of debt. Failing to pay fines can have serious consequences, including losing your licence or in some cases imprisonment. In some states and territories there are programs available to help you repay eligible fines through community work or by attending education or support programs. Some states and territories have special schemes for fines incurred because of family or domestic violence.

Information about fines and your options can be found on the [National Debt Helpline website](#) or may be found on the legal aid commission website in your State or Territory.

If you do not think you are responsible for the fine, you should get legal advice. See [Attachment A](#) for legal service contact information.

Centrelink and tax debts

Centrelink debts can be incurred when Centrelink determines you have been overpaid and you need to pay back some of the money Centrelink has paid to you. For example if Centrelink believes you did not correctly report your income, you may incur a Centrelink debt.

If you have a Centrelink debt, it is important to get legal advice or call the [National Debt Helpline](#) on 1800 007 007.

You may have a tax debt to the Australian Taxation Office (ATO) after you submit your tax return at the end of the financial year. If you are not sure about your tax debt or if you are unable to pay the debt, contact the ATO or call the [National Debt Helpline](#) on 1800 007 007 to discuss your situation.

GETTING HELP TO REACH AGREEMENT

Most people are able to reach agreement about their finances and property after separation without the need to go to the family law courts.

Some people seek assistance from a specially trained mediator known as a Family Dispute Resolution Practitioner (FDRP) to help them to reach agreement.

Family lawyers can also help separated people to reach agreement by: providing advice about the possible outcomes in their case, helping a person to formulate their offer of settlement and ensuring any agreement reached is binding and legally enforceable.

FDRPs and family lawyers can also assist you to work out your parenting arrangements after separation.

ADR

Alternative dispute resolution (ADR) is any process where an independent third person helps parties to resolve the dispute without the need for a decision by a court. ADR can take many forms. Some common types of ADR in family law are: family dispute resolution, arbitration and lawyer assisted family dispute resolution.

You may wish to seek independent legal advice about the form of ADR that would be most suitable for you and how to prepare for ADR. See [Attachment A](#) for legal services.

FDR

Family Dispute Resolution (FDR) is a special type of mediation that helps separating families to reach agreement. FDR is conducted by a neutral and accredited Family Dispute Resolution Practitioner. FDR is the most common form of ADR used in family law disputes. For more information about FDR you can visit the [Family Relationships Online](#) website.

FDR is offered through [Family Relationship Centres](#) for free or a modest fee. To find a government-funded service, call the Family Relationship Advice Line on 1800 050 321 or use the [Find Local Help webpage](#) to search for a Family Relationship Centre, Family Dispute Resolution service or a Regional Dispute Resolution service (if you are in a regional location) near you. You can also search the [Family Dispute Resolution Register](#) to find a private FDR practitioner near you.

Safety

If you are concerned about your safety you should raise this with the FDR service and/or your lawyer. The service will assist you to explore whether there is a way you can safely participate in mediation. This might include measures to ensure you do not need to be in the same room with your ex-partner.

Legally assisted FDR (where both parties are supported by lawyers) is also a good way to ensure any power imbalances or safety concerns are addressed and do not impact the outcome. You can seek independent legal advice. See [Attachment A](#) for contact details.

In some cases it will not be safe for FDR to occur. For more information, see the [Family Relationships Online](#) website.

REACHING AGREEMENT ABOUT YOUR PROPERTY SPLIT

As set out above, most people reach agreement about their finances after separation. You can do this unassisted, or you may wish to have the assistance of FDR and/or a family lawyer.

If you are attending FDR or otherwise negotiating with your ex-partner you will need to think about what your offer of settlement will be. An offer of settlement is your proposal to your ex-partner about what the split of assets and debts should be. You may need to each revisit your offer of settlement a few times before you come to a final agreement. Reaching agreement often means both parties have made reasonable compromises.

Disclosure

You and your ex-partner are required to provide each other with any information that may be relevant in your case (duty of disclosure).

You are also required to provide each other with all relevant information about your financial situation including your property, income and debts (full and frank disclosure). This might include bank statements, tax returns or other financial documents. It applies to property in your name or held on your behalf by a corporation or trust. It also includes property disposed of in the year before separation or after separation.

The duty of disclosure and the requirement to provide full and frank disclosure in financial cases are collectively known as disclosure. They are legal obligations that apply when you start negotiating with your ex-partner and continue until you reach the final agreement or decision. There are consequences for failing to provide full disclosure, including fines, or the court setting aside your orders and making other orders.

If you are concerned about your safety, you may be able to black out information that relates to your address or that might identify your whereabouts on documents you are providing under your disclosure obligations. *If you are unsure about your disclosure obligations or think your ex-partner has not disclosed all relevant information about their financial situation you should get legal advice.*

Possible approach to reaching agreement

A possible approach that will help you think about your offer of settlement and structure your negotiations is set out below. This approach draws on information in the [Property and Financial Agreements and Consent Orders – What You Need to Know guide](#).

When negotiating, it is important to think about what will be a ‘just and equitable’, or a ‘fair’ outcome overall.

You and your ex-partner can structure your negotiations in the following way:

- 1. Identify and value all property**
 - this means working out what assets each party has individually and jointly, and what debts each party has individually and jointly. A blank property pool worksheet is available at the end of this guide at [Attachment B](#) to assist you to complete this task.
- 2. Work out the contributions** that both you and your ex-partner made, this includes:
 - direct and indirect **financial contributions**, such as contributing wage and salary earnings or gifts and inheritances from family
 - direct and indirect **non-financial contributions**, such as building the home (direct); and unpaid support of a family business, and **homemaker and caregiver contributions**, such as caring for children (indirect).
- 3. Allocate an overall percentage** entitlement to you and your ex-partner based on your respective contributions (the percentages when added together should equal 100%).
- 4. Consider the future needs** of both you and your ex-partner (known as the ‘section 75(2) factors’). For a full list of the factors see section [75\(2\) of the Family Law Act 1975 \(Cth\)](#) (the Family Court Act 1997 (WA) may apply in Western Australia). Some of these factors include, you and your ex-partner’s:
 - age and health
 - financial and property resources (what is the current income and earning capacity of each person)
 - caring responsibilities for any dependents or children of the relationship (including who will have the majority of caring responsibilities).
- 5. Take your and your ex-partner’s future needs into consideration** (by looking at the factors listed under section 75(2)). Then **readjust the percentage** you came to in step 3 to account for the future needs of each person. This will be the final overall percentage split of property and finances for each person.

Once you have worked out what the overall percentage split should be, you will need to decide what assets and/or debts you will propose to keep and which assets and/or debts your ex-partner will keep. You will need to make sure these assets and debts add up to the percentage you reached in step 5 above. This guide will help you to do this in the next section, ‘Finalising your property split’.

SCENARIO

AN APPROACH TO REACHING AGREEMENT FOLLOWING THE ABOVE STEPS

The possible approach to reaching agreement outlined above is illustrated in this case scenario:

Step 1: Identifying and valuing all property

Alex and Sam were together for 10 years and have recently separated. Sam works full time and earns \$75,000 a year. Alex works part-time and earns \$40,000 a year. They have two children aged two and six. Alex and Sam have a house with a mortgage, two cars with car loans, a credit card with money owing and each have different amounts of superannuation.

Step 2: Working out contributions and Step 3. Allocating an overall percentage split:

Since having children, Alex has worked part-time so that Alex can care for the children two days a week. Alex is also responsible for taking the children to and from day care and school. While Sam and Alex try to share caring responsibilities for the children after work, Sam travels a lot for work, so Alex is often solely responsible for the care of the children. Sam built their house as an owner builder. In addition to both of them working, Alex has performed the majority of childcare responsibilities, and Sam built their home, so they both agree their contributions are roughly equal (50% each).

Step 4: Considering future needs, the 'section 75(2) factors' and Step 5: Readjusting the percentage split

Sam and Alex are both 34 and are likely to be able to work until retirement age. They agree that the children should live with Alex and spend significant amounts of time with Sam. They also both acknowledge that Alex's ability to earn income and superannuation was limited by extended periods of parenting leave and the fact that Alex has been working part-time to care for the children and that Alex will likely have significantly more caring responsibilities than Sam into the future. This will impact Alex's ongoing ability to work full time. Taking this into account they agree that the property split should be readjusted in Alex's favour to reflect this future need. Sam and Alex reach an agreed split of their property. They then work out which assets and debts from the property pool they will each keep to give effect to their agreed split.

How are debts considered when trying to reach agreement?

As set out above in step 1, all assets and debts should be considered at each step of the process when trying to arrive at a fair property split or your offer of settlement.

Two examples of issues that may arise regarding debts, when trying to reach agreement, are discussed below:

SCENARIO

ONE PERSON CAUSES DEBT AFTER SEPARATION THAT REDUCES THE VALUE OF THE PROPERTY POOL

Dave and Sandra were together for 11 years. Dave runs his own business, last year he drew \$100,000 in wages from the business. Sandra works part-time, earning \$52,000. For six months after separation Dave used a credit card in his name that had been paid off at the date of separation, to pay for his daily living expenses and for online gambling. The amount owing on the credit card is now \$16,000.

Sandra wants to know if the credit card debt should be considered as part of the property pool now they are negotiating their property split. And if it is, how should they take Dave's gambling into account in deciding the overall percentage split?

Generally, the property pool is calculated as at the date the parties get final court orders, consent orders or enter into a binding financial agreement. Usually, liabilities or debts that are from before this date are considered part of the property pool even where they are in one person's name. There are some exceptions, including if one person has intentionally set out to reduce or minimise the value of the property pool or has acted recklessly or negligently and as a result reduced the property pool.

Sandra and Dave may discuss what, if any, of the \$16,000 credit card debt was reasonably incurred and whether it is appropriate for either some of the debt to be excluded from the property pool, or for there to be an adjustment to the property split in Sandra's favour to account for Dave's online gambling debt.

SCENARIO

MONEY FROM FAMILY – GIFT OR LOAN?

Salman and Fatima were married for six years and have two children aged two and four. When Salman and Fatima got married, Salman's parents gave them \$30,000 to help them with their house deposit. Fatima and Salman never signed any loan agreement for the \$30,000, they have not made any repayments, nor have they been asked to make repayments by Salman's parents.

Salman and Fatima are negotiating their property split, and Salman wants the loan to be included in the property pool as a debt due to his parents. If the debt is not included in the property pool, Salman wants to know how they should take the \$30,000 into account in deciding the overall percentage split.

Generally, where there has been no loan agreement or repayments for a sum of money provided by one person's family member, it is unlikely to be a debt included in the property pool (step 1 above) and paid out as a part of the property split. The money however, would likely be taken into account when working out contributions (step 2 above).

Depending on the overall property pool and the other contributions of both Fatima and Salman, they may agree that the property pool should be split with an adjustment in Salman's favour to recognise his indirect financial contribution; the \$30,000 provided by his family members.

For more practical information about reaching agreement in family law property matters and the options to formalise agreements, including how to draft workable consent orders, see the [Property and Financial Agreements and Consent Orders – What You Need To Know](#) guide.

Remember! You should consider getting independent legal advice before you make an offer of settlement in a family law property matter. See [Attachment A](#) for legal services you can contact.

FINALISING YOUR PROPERTY SPLIT

Once you have determined what the overall percentage split of your property pool should be, you will need to decide what assets and/or debts you will propose to keep and which assets and/or debts your ex-partner would keep. You will need to make sure these assets and debts add up to the overall percentage split you decided on. A blank property settlement worksheet is available at the end of this guide at [Attachment C - Property split worksheet](#) to assist you to complete this task.

Once you have decided the final overall percentage split of your property and what will happen to each asset and liability to effect this percentage split, there are two further matters to consider:

- 1) What form will my family law property agreement take?
- 2) What should my agreement say?

What form will my family law property agreement take?

If you have reached agreement, you have three options to finalise your property split:

- a non-legal or informal arrangement
- consent orders
- a binding financial agreement

To understand more about these three different options and help you decide the right option for you, see the [Property and Financial Agreements and Consent Orders – What You Need To Know](#) guide. You can also consider getting legal advice about the best option to finalise your agreement in your specific circumstances. See [Attachment A](#) for legal service contact details.

What should my agreement say?

If you have decided to apply for consent orders, it will be important that the orders you are seeking end the financial relationship between you and your ex-partner and avoid the need for any future court proceedings.

Each of the orders you ask the court to make should be written in a way that makes it clear what is happening to all the assets and debts. This process of writing up your agreement is sometimes referred to as drafting your consent orders. The orders will need to be specific about what needs to happen, especially where an asset or debt needs to be sold or transferred. Questions to ask when considering specific orders are:

- **who** is required to take an action?
- **what** action do they need to take?
- **when** do they need to take that action by?

This approach may also assist if you are making a non-legal, informal arrangement or seeking a binding financial agreement.

What should my agreement say about debts in my name that I keep?

Where one party is agreeing to take responsibility for a debt as part of the property split, this should be stated specifically in your consent order.

This is sometimes phrased as an 'indemnity'. An example of this kind of order is:

That, from the date of these orders, Party A is liable for all repayments, including interest and shall indemnify and continue to indemnify Party B, in respect of the debt owing to the X Corporation, account 123456789.

It is important to understand that an order such as the example above does not require or force the lender to take any action. See [part three](#) for more information about changing legal responsibility for a debt in family law matters. In this example, the order is binding on Party A, but the order is not specific about the type of action Party A needs to take in relation to the debt or when they need to take the action by. Where the debt is one that is already in Party A's sole name, this 'indemnity' may be a sufficient order. It states the agreed intention that Party A will remain legally responsible for a debt in their sole name and that the debt has been considered as part of the overall property split.

What should my agreement say about a debt not in my name or in both our names that I do not keep?

If the debt is in Party B's name or joint names and it is intended that Party A be solely responsible for the debt, the above **order is not likely to provide enough protection** for Party B. This is because under the above indemnity order, Party B is still legally responsible for the debt, and can still potentially be pursued by the lender if Party A does not comply with the orders and stops making repayments.

If this happens, Party B would need to try to recover their losses from Party A, which can be difficult and costly.

In this case, Party B should instead consider and seek legal advice about any alternative options. For example:

- Can the debt in their name be paid out as a part of the property split?
- Can specific orders regarding the payment of the debt with sale proceeds from another asset be included in consent orders?

See [part three](#) for more information about changing legal responsibility for a debt in family law matters.

Thinking about what could go wrong

It is important when drafting consent orders that they clearly outline what specific action is required, by what specific time and what the next steps are if one person fails to comply with the orders.

It's also important to think about what could go wrong and how you are protected if the other person does not comply with the orders.

SCENARIO

SPECIFIC, ENFORCEABLE ORDERS FOR THE PROPERTY SPLIT

Donna and Peter have reached agreement and are starting to draft consent orders. They have agreed that Peter will keep the house and pay Donna \$40,000. They will end (discharge) the existing joint mortgage and Peter will start a new mortgage in his sole name.

Donna has considered what might happen if the bank will not agree to discharge the joint mortgage and lend to Peter in his sole name. Donna and Peter have included an order for the transfer of the house, payment to Donna and discharge of the joint mortgage to happen at the same time. They have also included a timeframe that this must occur within. If it does not occur within the timeframe, the orders require the house to be listed for sale.

In this example, Donna and Peter have included what specific action is required and when, as well as what will happen if Peter cannot get a mortgage in his sole name in the time required (that is, the house will be listed for sale).

For more information on how to write workable consent orders see the [Property and Financial Agreements and Consent Orders – What You Need To Know](#) guide.

PART THREE:
Family Law Court
Property Proceedings



PART 3

Part three of the guide focuses on the things you might be most concerned about if you have family law property proceedings and debts. In this part, we cover:

- Applying to the family law courts for orders about property
- Court process, including safety at court
- Types of interim orders that may relate to debt or financial hardship
- Debt related issues that may arise in family law court property proceedings

APPLYING TO THE FAMILY LAW COURTS

If you have attempted to reach agreement with your ex-partner and have been unsuccessful, you can apply to the family law courts for orders dividing the property (assets and debts) of the relationship.

You have obligations to do certain things before making an application to the family law courts and some of these obligations continue during the legal proceedings, including attempting to reach agreement and providing full and frank disclosure, as discussed above in [part two](#).

Some exceptions apply, such as in urgent cases. You should get legal advice about your case and the specific court you are applying to, to ensure you have complied with your obligations.

Who can apply to the family law courts for a property split?

You can apply to the family law courts for orders relating to property if your relationship was either:

- *a marriage; or*
- *a de facto relationship*

The term de facto relationship is defined as a relationship between two people who are not legally married or related by family, who have a relationship as a couple living together on a genuine domestic basis.

You should get legal advice if you are unsure if your relationship would be considered a de facto relationship. See [Attachment A](#) for legal services you can contact.

Time limits to apply to the family law courts

There are time limits for commencing property proceedings:

- ***If you were married***, applications for property proceedings must be made **within 12 months of your divorce** becoming final.
- ***If you were in a de facto relationship***, applications for property proceedings must be made within **two years of the end of your relationship**.

Extension to these time limits may be available in limited circumstances.

COURT PROCESS AND EVENTS

Depending on which family law court you are applying to, the court will take a slightly different approach to managing your case. You should look at the website of the court you are applying to, to find information about the process specific to that court:

- [Federal Circuit and Family Court of Australia \(FCFC\)](#)
- [Family Court of Western Australia \(FCWA\)](#)

The FCFC began on 1 September 2021 and includes two divisions:

- Division 1 continues the [Family Court of Australia](#)
- Division 2 continues the [Federal Circuit Court of Australia](#)

All federal family law matters are filed in Division 2 of the FCFC and can be transferred to Division 1 on application by a party or at the Chief Justice's discretion. Proceedings in Western Australia must be commenced in the FCWA.

Note: As well as the above courts, some other state and territory courts are able to deal with property proceedings in some circumstances. This generally includes property proceedings where the value of property and finances to be split is up to \$20,000 (a higher amount may be set by regulations, or you may be able to agree with your ex-partner to the court dealing with property a higher amount).

Court forms

To start property proceedings you will need to file certain documents with the court. Generally, you will need to complete an Initiating Application and other supporting documents in relation to your financial situation. If you are responding to someone else's application to the court for property you will generally need to complete a Response Application and a Financial Statement. In some cases, you will need to complete additional forms, like a Superannuation Information Kit. If you are applying for consent orders you may need to complete fewer forms, you should read the [Property and Financial Agreements and Consent Orders – What You Need To Know](#) guide.

You can find these forms on the court websites listed above or visit your local family law courts registry. You can find your local family law courts registry on the [Federal Circuit and Family Court of Australia website](#) or the [Family Court of Western Australia website](#). You should obtain legal advice before commencing family law court proceedings. See [Attachment A](#) for legal service details.

Court events

A court event is any time you need to attend court. You might also have heard this referred to as a court date. Some common court events in family law property proceedings include:

1. Mention or Directions Hearing

This court event is usually procedurally focused. This means the judicial officer will want to check certain tasks have been completed by you, like filing documents or obtaining valuations. They may also set dates for other tasks to be completed by you and your ex-partner prior to a final hearing or other major court event.

2. Conciliation Conference or Dispute Resolution Conference

If you do not reach an agreement about your financial issues at your mention or directions hearing, the court may order you to go to a Conciliation Conference or a Dispute Resolution Conference. These Conferences are conducted by a judicial officer and provides another (compulsory) opportunity for you and your ex-partner to reach agreement.

3. Final Hearing

A final hearing is only required in a small number of cases. Most cases resolve with the assistance of ADR (including FDR) and earlier court events, outlined above. A final hearing will involve the judicial officer hearing the evidence of both parties, their respective proposals for final orders and making a decision about how the assets and debts should be divided.

You should attend the first court date and any subsequent court date with a good understanding of your case (including any documents you have filed) and what the main issues in dispute are and why they are still in dispute.

The approach taken by the court can be different in each case and you should seek legal advice about your specific matter. You may also contact the registry office of the court your matter is in to ask any procedural questions. You can also look at the court's website to find information about going to court.

Safety at court

If you are concerned about your safety when attending any court event (including a Conciliation Conference or Dispute Resolution Conference) you can call the Family Law National Enquiry Centre on 1300 352 000. They will assist to make arrangements so that you can participate safely. For example, the court may be able to conduct the court event with you and your ex-partner in separate rooms.

If your matter is in Western Australia, you can request personal safety measures be put in place by writing to the Court before your court event (see the [Personal Safety page on the Family Court of Western Australia website](#)).

You can also contact the Family Court of Western Australia call centre on (08) 9224 8222 for advice about personal safety measures.

Ban on personal cross-examination

If your case involves a family or domestic violence allegation or conviction, personal cross-examination may be 'banned' in your case. The ban means the parties cannot directly cross-examine each other, and parties will require legal representation for cross-examination to occur. If you think this is relevant in your situation, legal representation may be arranged privately or through legal aid under the Family Violence & Cross Examination Scheme. Contact your state or territory legal aid commission for more information. See [Attachment A](#) for contact details.

INTERIM ORDERS

Interim orders are temporary orders that may be made by the court before your property proceedings are finalised. Interim orders can be sought in a range of situations, including to deal with repayment of debts or where you are experiencing difficulty meeting living expenses. Some types of interim orders that may be available in your case include:

Spousal maintenance orders

A person has a legal responsibility to financially assist their ex-partner if that person cannot meet their own reasonable expenses. If you can demonstrate to the court your need for financial assistance, the extent of the financial support the court will require the other party to pay will depend on what the other party can afford. Applications for spousal maintenance can be made on an urgent, interim or final basis.

Financial disclosure

If you are having difficulty obtaining full and frank financial disclosure from the other party, you can ask the court for an order for disclosure. The court can direct the other party to take certain actions or provide specific documents to you.

You may also be able to issue a subpoena directly to a lender, bank or other third party in order to obtain relevant financial information. If the other party still does not comply with their duty of disclosure, the court may:

- set orders aside
- adjust a property split in favour of the party who has provided full disclosure
- order the other party to pay your legal costs
- fine the other party
- charge the other party with contempt of court (which can result in imprisonment).

Injunction to prevent one party from returning to the home

Where you are unable to continue living with your ex-partner and cannot agree who will stay in the home, you (or your ex-partner) are able to apply to the court for an order about who should live in the home while the final property split is being determined. This is sometimes called a sole use and occupation order. You will need to demonstrate to the court that such an order is necessary. The court will consider all the relevant circumstances and in particular: any family or domestic violence that has occurred and the conduct of each party, the needs of the parties especially any children and the ability of each party to afford alternate accommodation or any hardship they may suffer.

Partial property division

A partial property division or interim property settlement is where you ask the court to make a decision about specific property in the property pool before deciding the final outcome of your property proceedings. The court will not make an order that would exceed the share the person would likely receive in the final orders. The court would consider a partial property division when making final property orders.

Other injunctions

Injunctions are orders that restrain people from acting in a certain way, or require them to act in a certain way. For example, you may require an injunction to prevent a person from selling or mortgaging a property without your consent. The person bringing the application will need to demonstrate to the court the risk of disposal of the property or other reason why the injunction is necessary. These orders are usually in operation for a set period of time. You may also wish to discuss with a lawyer other options to prevent property being disposed of by the other party such as lodging a caveat.

You should get legal advice prior to applying for interim orders.

Legal advice can assist you to consider the likelihood of success and any risks associated with an application for interim orders. These processes often involve additional court events, which can cause delay in finalising your matter or create additional expenses for you. There may also be a risk you will need to pay the other party's legal costs if you are unsuccessful, in some circumstances. See [Attachment A](#) for where to get help.

ISSUES THAT MAY ARISE IN FAMILY LAW COURT PROCEEDINGS

Some issues that may arise in family law proceedings involving debts include:

Family law court orders changing legal responsibility for a debt

As a starting point, responsibility for each debt will generally sit with the party whose name the debt is in. That is, the party who has legal responsibility for repayment under the agreement or contract for the debt will continue to be responsible for the debt after the property split.

In some circumstances family law courts may order a lender to change responsibility for a debt under the credit contract as part of property proceedings. This could include ordering:

- a lender to remove one person from a joint debt, making the other person responsible for repayment on their own. The court may also do the opposite and make a debt that is only the responsibility of one party a joint responsibility.
- a lender to adjust the amount of a debt each person is responsible for to fairly deal with the debt as part of a property split. Both people remain responsible for repayments but the share of responsibility for what is owed is changed, or
- a lender or third party to do a thing, or altering their rights, liabilities, or property interests.

There are important limitations to the family law court's powers to make these orders:

- it cannot be likely when making the order that the outcome would be that the debt is not paid back in full;
- the lender must be given the opportunity to consider the order that is being sought, to join the proceedings, and to inform the court of its views on the order sought, if the lender chooses; and
- the order must also be necessary to give effect to the property split and be fair, taking into account all of the circumstances.

You should get legal advice before you apply to the court for these types of orders.

A family lawyer can help you to explore other options for allocating assets and debts between you and your ex-partner. For example, are you able to 'offset' or compensate for keeping more of the debts by keeping more of the property? For more information, see [part two](#). There is also a blank property settlement worksheet available at the end of this guide at [Attachment C](#) to assist you to work out your options for keeping debts and assets that would result in the overall percentage split you have decided on.

Where there is no net property in the property pool and all that needs to be split between you and your ex-partner are debts, the option to compensate the party remaining responsible for most of the debts by transferring property may not be available. This situation is sometimes referred to as a 'negative' or 'debt only' property pool. 'Debt only' situations can be complicated and you should obtain legal advice and contact a financial counsellor to get assistance with your debts. See [Attachment A](#) for where to get help.

If a 'debt only' property pool sounds like it applies to you, **don't forget that superannuation is also an asset**. If you think all you have to divide is debt, you may be entitled to a share of your ex-partner's superannuation.

Family law court orders splitting superannuation interests

The law lets separating couples value and split superannuation, including in cases where superannuation is the only asset or financial resource. Splitting superannuation does not convert it into a cash asset, it is still subject to superannuation laws (for example, it is usually retained until retirement ages are reached).

Superannuation interests can be split between you and your ex-partner by agreement or court order. You must get legal advice to make a superannuation splitting agreement.

The [Property and Financial Agreements and Consent Orders – What You Need To Know](#) guide provides information on how to draft workable consent orders, including superannuation splitting orders.

In Western Australia, de facto couples are not able to seek orders to split superannuation, only married couples are eligible. Changes to the law to address this are being progressed. If you are in Western Australia you should consult the [Family Court of Western Australia website](#) or seek independent legal advice.

Bankruptcy and family law proceedings

Bankruptcy is a legal process that may be applicable to you if you are unable to pay your debts when they fall due. See below in [part four](#) for more information if you are considering bankruptcy.

Bankruptcy does not stop an application for property proceedings in a family law court.

If you or the other party is bankrupt, or becomes bankrupt during your property proceedings, you must tell the court and the bankruptcy trustee. The bankruptcy trustee may apply to the court to take part in the proceedings.

Generally, the trustee takes the place of the bankrupt person in the proceedings. This is because when a person becomes bankrupt, the trustee in bankruptcy has the right to possess and control the bankrupt person's property, including the right to sell it.

If the bankruptcy trustee decides to apply to take part in the proceedings, the bankrupt party cannot make any submissions to the court about the property without the court's permission.

Family law courts have the power to adjust the interests of the bankruptcy trustee.

Dealing with bankruptcy and family law property proceedings can be complicated and you should get independent legal advice about your situation. See [Attachment A](#) for where to get help.

Note: Currently de facto couples in Western Australia who are separating while going through bankruptcy are required to go through two different courts: the Family Court of Western Australia for the family law matter, and the Federal Court or Federal Circuit and Family Court of Australia (Division 2) for the bankruptcy matter. Changes are being progressed that will mean Western Australian de facto couples will be able to have their bankruptcy proceedings heard at the same time as their family law proceedings in the Family Court of Western Australia.

PART FOUR:

Managing debts
after final orders
or agreement





PART 4

Part four of the guide focuses on the things you might be most concerned about after you have reached agreement with your ex-partner about your debts. In this part, we cover:

- What if my agreement with my ex-partner doesn't bind the lender?
- What if my ex-partner isn't complying with the agreement?
- What if a lender is pursuing me for a debt?
- Should I consider bankruptcy?

WHAT IF MY AGREEMENT WITH MY EX-PARTNER DOESN'T BIND THE LENDER?

The best way to protect yourself when making arrangements for how debts will be treated after separation is to ensure your agreement is legally binding and enforceable. See [part two](#) for information about finalising your agreement and ensuring it is enforceable.

You should provide a copy of the orders or agreement to any third party who will need to take action to bring your agreement or orders into effect. For example, a superannuation fund trustee where there is an order splitting superannuation.

If you find yourself with an agreement or order regarding your debt (including joint debts) that doesn't legally bind the lender (see [part two](#) for an example of such an order), you should get legal advice about your options to get an order that is legally binding. Where this option is unavailable, you should ask the lender for their voluntary agreement to bring the agreement or order into effect.

Where this involves changing a debt from one person's name to another or removing one person's name from the debt, the lender would need to create a new credit contract. Lenders have their own obligations and responsibilities when considering whether to loan money or change arrangements for repaying a debt. If your name **can** be taken off the loan contract by the lender, you no longer have to worry about this debt. You should get written confirmation from the lender that your name is longer on the debt and that you have no further responsibility for it.

If the lender cannot create a new credit contract you should:

- **Contact the lender** and provide them with a copy of the family law orders or agreement and draw their attention to any order or clause that your ex-partner takes responsibility for the loan or debt in question. If you cannot create a new credit contract, so that you are removed from the loan, ask the lender to notify you immediately if your ex-partner fails to make repayments as required by the family law order or agreement.
- **Regularly check your bank or loan statements** to make sure your ex-partner is making repayments. Even if an arrangement is in place that your ex-partner will make repayments, you are entitled to request copies of statements from the lender for any debt in your or joint names or that you are a guarantor for, to check that repayments are being made. This is because the credit contract has not changed and you are still legally responsible for this debt.
- **Check your credit report.** See 'How to check your credit report' on the next page.

How to check your credit report

There are three major credit reporting bodies in Australia – [Experian](#), [Equifax](#) and [illion](#). You can contact one of these bodies to get a copy of your credit report. Check their website for further information.

When you request a copy of your credit report, you usually have to provide your residential address. If you are experiencing or worried about family or domestic violence, call the [National Debt Helpline](#) on 1800 007 007 before requesting a copy of your credit report. A financial counsellor can help you to protect your safety when seeking a credit report.

Credit reports

A credit report is a record created by a credit reporting body which includes information about your personal details, such as your name and address, and your dealings with lenders. Lenders can also provide credit reporting bodies with information about you, your debts, repayment history and other information, for inclusion on your credit report. If you have a poor credit history, it may be more difficult to get a loan.

Defaults, judgements and credit enquiries for loans are listed for five years. Bankruptcy and debt agreements are listed for at least five years from the date of bankruptcy or debt agreement, or two years from the date the bankruptcy ends or debt agreement is terminated or voided, whichever is longer. From 1 July 2022, financial hardship information will also be visible on your credit report for one year. Hardship arrangements alone cannot be used as a reason to deny future loan applications on an existing credit account.

Having information about late payments, defaults or hardship arrangements on your credit report might make it harder to get a loan. However, these details will not be on your credit report forever. If you are struggling financially and have poor credit history, there are options to borrow money safely. See [part one](#) for more information.

It is a good idea to check your credit report occasionally to make sure the information captured in it is correct. You can obtain a copy of your credit report for free once every three months. If something is incorrect, contact your lender and/or credit reporting body and let them know. You have a right to have incorrect information on your credit report corrected. If they fail to respond within 30 days or refuse to change the listing, you can lodge a complaint with AFCA or the Office of the Australian Information Commissioner.

WHAT IF MY EX-PARTNER ISN'T COMPLYING WITH THE ORDER OR AGREEMENT?

Family law orders will be enforced only if a party to the order brings an application to the court for some kind of enforcement or sanction against the other party.

The Family Law Act and Family Court Act of Western Australia provide for various sanctions against people who fail to comply with orders. Sanctions can be imposed when the court finds that a person has contravened a court order, and the person does not satisfy the court that they had a reasonable excuse. The term 'contravene' means disobey. A person contravenes an order by intentionally failing to comply with it, or by making no reasonable attempt to comply with it. The possible sanctions include fines, bonds and imprisonment.

There are specific rules for the enforcement of family law financial orders. A person's obligation to pay money can be enforced by seizing real estate or personal property and using that property to satisfy the person to whom the money should have been paid under the order. It can also be enforced by legally seizing a portion of the wages or earnings of the person who is ordered to pay, and using that money. The court also has powers to require the payer to provide their financial information.

Enforcement proceedings are most effective where there is some other property or income you can direct the court to in order to effect the property split originally agreed to or ordered by the court.

Where the other party is not working and has no other property, it may be difficult to enforce the split in your family law property orders. **For this reason, it is important that you get legal advice about your specific situation before commencing enforcement proceedings.** You may also choose to arrange to attend FDR with your ex-partner to try and resolve the issue.

WHAT IF A LENDER IS PURSUING ME FOR A DEBT?

If you are not making repayments on debt owed by you (either in your sole name or joint names) the lender may be entitled to chase you for the debt. If your property, such as a house or car, was used as security for a loan, in some circumstances lenders can repossess that property. This is called civil enforcement.

If you are experiencing financial hardship and cannot make your repayments, apply for a hardship arrangement with your lender to avoid the risk of civil enforcement. This is discussed in [part one](#).

Civil enforcement

If a lender wants to take civil enforcement action for a loan or credit product covered by the National Credit Law, they must send you a default notice in writing providing you with at least 30 days to repay the debt that is outstanding. The notice must include your rights and obligations and the steps your lender must take before they can repossess your property. You can also request to postpone the enforcement proceedings before the end of the period in the notice. This may give you more time to take steps to repay the debt before the enforcement proceedings start.

When lenders commence enforcement proceedings, you can make a complaint to AFCA if you have already lodged a complaint with the lender, and you are dissatisfied with the lender's decision. In most circumstances an AFCA complaint will put legal proceedings on hold until the complaint is resolved. You should act quickly as AFCA may not be able to consider your complaint if judgment has already been obtained against you. It is important to be aware that family law proceedings alone will not stop lenders from pursuing civil enforcement.

If you are facing civil enforcement action, you should get legal advice. See [Attachment A](#) for where to get help.

There are also some helpful resources online which provide information about civil enforcement laws that apply in each state and territory. For example, see ASIC's [Moneysmart factsheet](#) on repossession of goods and cars.

You have been contacted by a debt collector

If you fall behind on your repayments and have not reached an agreement with your lender, you might be contacted by a debt collector. A debt collector can contact you on behalf of a lender or purchase your debt from the lender and chase you for a debt in their own right. This is called assigning a debt. If you are contacted by a company you have never heard of asking you to repay a debt, then you should ask for details of the debt, including written notice that your debt has been assigned to the debt collector.

It is important not to acknowledge responsibility for a debt, or agree to make repayments until you understand the details of the debt and who should be responsible for repayment, and you are sure that a debt collector has the right to pursue you for a debt. Tell the debt collector if you are getting legal advice.

What are debt collectors allowed to do?

Debt collectors can contact you to ask for repayments, to demand a payment, make or review a payment plan or repossess mortgaged goods such as a car, if the loan contract gives them that right. The lender or debt collector must have a court order to repossess property or goods which are on private property.

Debt collectors should only contact you via phone as many times as necessary for a reasonable purpose. They can also contact you by email, social media or in person, however they should not come to your home or workplace unless you agree to it.

People who owe money are protected from harassment by debt collectors under Australian law. Debt collectors are not allowed to mislead you or take advantage of you. If a debt collector has harassed you call the [National Debt Helpline](#) on 1800 007 007. If you believe a debt collector does not have the right to pursue you for a debt, get legal advice. See [Attachment A](#).

The Australian Competition and Consumer Commission (ACCC) and Australian Securities and Investments Commission have produced a useful guide to understanding your rights and obligations in relation to debt collectors. You can access the guide on the [ACCC website](#).

Bankruptcy

Bankruptcy is a legal process where you declare bankruptcy, or a court declares you bankrupt, because you are unable to pay your debts when they fall due.

When you become bankrupt, a trustee can control certain property, including your house or land, your car if it is over a certain value, and antiques - but generally not your interest in superannuation funds or normal household items. The trustee has the right to possess and control this property, including the right to sell it in order to repay your lenders. In exchange, your lenders cannot take legal action against you to recover debts you owe them.

You can declare bankruptcy no matter how large or small your debts are. A lender can also apply to a court to have you declared bankrupt if you have committed an act of bankruptcy (such as failing to respond to a Bankruptcy Notice) in the last six months, and the amount you owe is \$10,000 or more – this is called a creditor's petition.

Declaring yourself bankrupt is a serious decision, so it is important to speak to a financial counsellor or get legal advice before you do.

While declaring bankruptcy can give you relief from your lenders taking debt recovery action and can often be a 'fresh start', it has drawbacks including:

- You stay bankrupt for three years and your financial affairs are managed by a trustee. Bankruptcy is listed on your credit report for at least five years and your name is permanently listed on the National Personal Insolvency Index (NPII). This means that anyone can access the NPII and see that you were bankrupt.
- You may be prevented from working in some professions or need special permission to do so.
- You may experience difficulties borrowing money and entering into contracts in the future.
- You will not be released from all types of debts, such as child support debts and HECS debts.
- You may be restricted from travelling overseas.

If you earn over a set amount you may have to make contributions to help repay some of your debts. As at date of publication, the set amount is \$60,515.00 (after tax) if you have no dependents. This amount is indexed every 6 months, and the amount you can earn before making contributions increases depending on the number of dependents you have.

Instead of declaring bankruptcy, you can enter into a legally binding agreement between you and your lenders called a debt agreement. A debt agreement requires you to pay back some of your debt over a period of time. When entering into a debt agreement, your lenders cannot take or continue debt recovery action against you. However, debt agreements have some similar consequences to bankruptcy, and it is important to speak to a financial counsellor or get legal advice first. See [Attachment A](#) for where to find help.

The Australian Financial Security Authority (AFSA) provides useful information regarding personal insolvency, including information about bankruptcy and debt agreements. You can find out more by visiting the [AFSA website](#).

Conclusion

Hopefully this guide assists you to work out how to manage and fairly divide responsibility for debts as part of your separation so that you can move on with your life. Debts and separation can be difficult and overwhelming to deal with, especially if you are experiencing financial abuse or are concerned about your safety.

Help and support is available. You do not have to deal with these issues alone.

- If you are experiencing or worried about family or domestic violence, including financial abuse, call [1800RESPECT](https://www.1800respect.org.au) (1800 737 732).
- If you need mental health or crisis support, you can contact [Beyond Blue](https://www.beyondblue.org.au) (1300 22 4636) or [Lifeline](https://www.lifeline.org.au) (13 11 14).
- If you need legal advice, you should contact a legal aid commission, community legal centre, Aboriginal and Torres Strait Islander Legal Service, or the law society in your state or territory.
- If you need a financial counsellor, go to the [National Debt Helpline website](https://www.nationaldebt.org.au) or call 1800 007 007.
- Other key services that may be able to assist you are listed in [Attachment A – Key support and legal assistance services](#).

Glossary

ADR	Alternative Dispute Resolution. This is where an independent person (for example, a mediator or arbitrator) helps people to sort out the issues between them without going to court. ADR is generally cheaper and quicker than going to court.
advocacy	Speaking in support of or on behalf of others. For example, a financial counsellor may speak on behalf of a person, to a lender or bank.
AFCA	Australian Financial Complaints Authority. AFCA is the independent external dispute resolution scheme for the financial sector. It resolves complaints made by individual and small business consumers against financial firms. Its services are free to consumers.
AFSA	Australian Financial Security Authority. AFSA is the Australian government regulator and the service provider for personal insolvency, which includes managing the application of bankruptcy.
arbitration	A process where parties to a financial dispute present arguments and evidence to an independent arbitrator, who makes a decision to resolve all or part of the dispute. There are two types of arbitration, court-referred arbitration (also known as section 13E arbitration) and private arbitration that you organise yourself (also known as relevant property and financial arbitration).
ASIC	Australian Securities and Investments Commission. ASIC is an independent Australian Government body which regulates Australia's integrated corporate, markets, financial services and consumer credit sectors.
bankruptcy	A legal process regulated by the <i>Bankruptcy Act 1966</i> where a person is declared as being unable to pay their debts. It can release a person from most debts, provide relief and allow them to make a fresh start.
bankruptcy trustee	A trustee is a person or body who manages your bankruptcy. This can either be the Official Trustee or a registered trustee. The Official Trustee (AFSA) administers bankruptcies when a registered trustee is not appointed.
binding financial agreement	An agreement that can be entered into at any time before, during or after a marriage or de facto relationship. This type of agreement can deal with how property, including debts are split. Each person must receive independent legal advice to make a binding financial agreement.
borrower	A person (other than a guarantor) who is liable to repay a loan.
civil enforcement	When a lender pursues payment of a debt, including taking action in a court and/or takes possession of any security for the loan.
consent orders	A court order made with the consent of the parties. These orders are usually made by a registrar without any court hearing and are legally enforceable.
consumer credit	The lending of money to a person for personal, household or domestic use or to purchase, renovate, or improve residential property for investment purposes.
consumer credit and debt law	A name for the area of law that deals with consumer credit and other types of debt in Australia.
contract	A legally binding promise or agreement that is usually in writing.
credit contract	A contract to borrow money that is paid back over time with an extra charge/ charges (for example interest or fees). A credit contract may also be called a loan contract.

credit report	A report that details a borrower's credit history, including every time they have applied for credit or defaulted on a repayment.
de facto relationship	A relationship between two people who are not legally married or related by family, who have a relationship as a couple living together on a genuine domestic basis.
debt agreement	A legally binding agreement between a debtor and their lenders which allows for debts to be settled without the debtor becoming bankrupt. Debt agreements are regulated by the <i>Bankruptcy Act 1966</i> .
debt collector	Debt collection is process where a person or company (called a debt collector) collects unpaid debts on behalf of a lender. They may also collect the unpaid debt on their own behalf where the lender has sold (assigned) the debt to them.
disclosure	Providing relevant information to the court or the other party in a legal case. In financial proceedings under the Family Law Act (Cth) or Family Court Act (WA), parties have an obligation to make full disclosure of their financial situation.
domestic violence protection order	A domestic violence protection order is a court order to stop certain behaviours to prevent family or domestic violence. These orders have different names in each state and territory.
family dispute resolution (FDR)	A process intended to assist parties resolve family disputes with the assistance of an independent family dispute resolution practitioner. A form of 'mediation'.
family law court	The term used in this guide to refer collectively to any court which can hear a family law application, including: Federal Circuit and Family Court of Australia and Family Court of Western Australia.
financial hardship	Financial hardship is a situation where a person takes on payment obligations under a credit or other contract, but then - for reasons such as illness, unemployment, or relationship breakdown - they cannot make their repayments.
guarantee	A promise accepting responsibility to repay a loan if the person who borrowed the money is unable to pay.
guarantor	A person who guarantees a loan. A guarantor is responsible for repaying the loan if the borrower is unable to pay.
financial hardship arrangement	Also called a hardship variation, it is an agreement made between the lender and borrower to change the payment obligations of the loan that borrowers are entitled to request under the National Credit Law. Examples of hardship arrangements include giving you more time to pay, or a temporary or permanent pause or reduction in repayment amounts.
informal agreement	An agreement made without taking any legal steps to formalise and make the agreement enforceable.
interim orders	An order made that lasts until a final order is made.
internal dispute resolution	A lender's in-house process to resolve complaints received about its products or services.
joint debt	Debts taken out in the name of more than one person, where all parties have responsibility to repay the debt.
judicial officer	A person with the responsibilities and powers to preside over, and make decisions and directions about the application of the law. For example, Judges, Family law Magistrates and Registrars.
lender	A financial institution or person who is owed money. Also commonly referred to as a creditor or creditor provider.
liabilities	A person's legal obligation to do something, such as the obligation to repay a debt.
loan	The act of lending something on the condition that it is returned. For example, the lending of money on the condition that it is repaid.

mediation	An informal process where parties involved in a dispute are assisted by an independent third party known as a mediator to help resolve their dispute.
mortgage	A mortgage is a type of secured debt. A secured debt is a loan or a debt that is guaranteed by an asset, such as a car or a house. If the borrower stops making payments on the loan the lender may be able to take action in relation to the asset that guarantees the loan. In the case of a family home this may mean taking ownership of and selling the home.
National Credit Law	National Consumer Credit Protection Act 2009 (Cth) and the National Credit Code ('NCC'). These laws provide uniform national legislation regulating the consumer credit industry and providing protections for consumers.
parties	The people who are involved in a court case or a legal dispute. In a family law property matter the parties will usually be ex-partners or spouses.
property pool	All the assets and debts of the parties to a relationship. It includes all assets and debts which are in one party's name or in both party's names.
property pool (net)	The net property pool is the total value of all assets minus the total value of outstanding debts of the relationship.
property split	The final division of assets and debts acquired during a marriage or relationship between the parties. A property split can be agreed on by the parties (settlement) or ordered by the family law courts.
registrar	An officer of the court who has authority, among other things, to make property orders by consent.
seizure	Taking possession of something, legally or by force.
superannuation	Money that you and your employers put into a special fund during your working life to provide you with money to live on when you retire.
superannuation fund trustee	Person or a company appointed to manage a super fund on your behalf.
third party	A person whose interests are part of a family law matter and who is not a member of the marriage or de facto relationship.
third party debt notice	A notice that requires a person or organisation (the third party) who it is alleged owes money to the debtor to pay that money to you rather than the debtor (for example, it could be wages).
unconscionable	Unjust, unfair, unreasonable, harsh or oppressive.

Attachment A:

Key support and legal assistance services

This attachment lists some key support and legal services that you can contact for information and help. These services can also refer you to services in your local area. For example, local assistance with utility debts, emergency relief, homelessness and tenancy support services.

Counselling and Crisis Support Services		
1800RESPECT	1800 737 732 1800respect.org.au	Free, confidential counselling, information, and support services for people who are experiencing or have experienced sexual assault, family and domestic violence and abuse. Available 24 hours a day, seven days a week.
Beyond Blue	1300 22 4636 beyondblue.org.au	Confidential telephone and online counselling, advice and referral service for people affected by anxiety, depression and suicide.
Lifeline	13 11 14 lifeline.org.au	Free 24-hour telephone, online and face-face crisis support and suicide prevention services.
Men's Referral Service	1300 766 491 ntv.org.au/get-help	Free, confidential telephone helpline offering assistance, information and counselling to help men who use family or domestic violence and abuse.
MensLine	1300 78 99 78 mensline.org.au	Free, confidential national telephone and online counselling, information and referral service for men with family, relationship and mental health concerns.

Legal Information and Advice Services				
Aboriginal and Torres Strait Islander Legal Services	ACT:	1800 733 233	alsnswact.org.au	Legal advice and legal assistance services for Aboriginal and Torres Strait Islander people, including for family law, family or domestic violence, parenting and credit and debt issues.
	NSW:	1800 733 233	alsnswact.org.au	
	NT:	1800 898 251	naaja.org.au	
	QLD:	1800 012 255 1800 082 600	atsils.org.au atsiwlsnq.org.au (North QLD)	
	SA:	1800 643 222	alrm.org.au	
	TAS:	1800 595 162	tals.net.au	
	VIC:	1800 064 865	vals.org.au	
	WA:	1800 019 900	als.org.au	
Community Legal Centres (CLCs)	AUS:	clcs.org.au		Free legal advice and information on general and specific legal issues, including family law, family or domestic violence and credit and debt issues.
	NSW:	clcnsw.org.au		
	QLD:	communitylegalqld.org.au		
	SA:	clcsa.org.au		
	TAS:	clctas.org.au		
	VIC:	fcl.org.au		
	WA:	communitylegalwa.org.au		
Family Advocacy and Support Services	ACT:	1300 654 314	Free legal assistance and social support services for people who have been affected by family and domestic violence and have a family law issue.	
	NSW:	1800 551 589		
	NT:	1800 019 343		
	QLD:	1300 267 762		
	SA:	(08) 8111 5300		
	TAS:	1800 431 157		
	VIC:	(03) 8373 7917		
	WA:	1300 650 579		
Family Relationship Advice Line	1800 050 321	familyrelationships.gov.au/talk-someone/advice-line	Free, confidential national telephone service that provides advice, information and referrals to people with relationship and separation issues. Includes information about the family law system, guidance on developing parenting arrangements, and referrals to Family Relationship Centres, family dispute resolution services, and other services.	
Family Relationships Online	familyrelationships.gov.au	Information about family law, parenting and family and domestic violence issues. Provides contact information for services including Family Relationship Centres, family dispute resolution services, family law counselling, and children's contact services in your local area.		
Family violence Law Help	familyviolencelaw.gov.au	Information and referrals to support services for family and domestic violence, domestic violence orders, parenting and other family law issues categorised by state/territory.		

Legal Information and Advice Services				
Legal Aid Commissions	ACT:	1300 654 314	legalaiddact.org.au	Independent legal advice and representation in legal matters, including family law. Grants of legal aid are determined on a case-by-case basis against legal aid commission guidelines.
	NSW:	1300 888 529	legalaid.nsw.gov.au	
	NT:	1800 019 343	legalaid.nt.gov.au	
	QLD:	1300 651 188	legalaid.qld.gov.au	
	SA:	1300 366 424	lsc.sa.gov.au	
	TAS:	1300 366 611	legalaid.tas.gov.au	
	VIC:	1300 792 387	legalaid.vic.gov.au	
	WA:	1300 650 579	legalaid.wa.gov.au	
National Debt Helpline	1800 007 007	ndh.org.au		Free and confidential financial counselling telephone service assisting people with their debt issues. The website provides free step-by-step guides to manage things like utility debts, credit card debts, Centrelink debts, and mortgage and rent payments.
Women's Legal Services	ACT:	1800 634 669	womenslegalact.org	Free legal advice, casework, information and referrals for women with family law, family and domestic violence, sexual assault and credit and debt issues.
	NSW:	(02) 8745 6988	wlsnsw.org.au	
	NT:	1800 234 441	tewls.org.au (Top End NT)	
		1800 620 108	kwils.com.au (Katherine NT)	
		1800 684 055	cawls.org.au (Central NT)	
	QLD:	1800 957 957	wlsq.org.au	
		1800 244 504	nqwls.com.au (North QLD)	
	SA:	1800 655 037	wlssa.org.au	
	TAS:	1800 682 468	womenslegaltas.org.au	
	VIC:	1800 133 302	womenslegal.org.au	
WA:	1800 625 122	wlswa.org.au		
State and Territory Law Societies	ACT:	(02) 6274 0300	actlawsociety.asn.au	Provide referrals to free, low cost or private legal services in your state and territory by area of law.
	NSW:	(02) 9926 0333	lawsociety.com.au	
	NT:	(08) 8981 5104	lawsocietynt.asn.au	
	QLD:	1300 367 757	qls.com.au	
	SA:	(08) 8229 0200	lawsocietysa.asn.au	
	TAS:	(03) 6234 4133	lst.org.au	
	VIC:	(03) 9607 9311	liv.asn.au	
	WA:	(08) 9324 8600	lawsocietywa.asn.au	

Family Law Court Information Services		
Family Court of Western Australia Call Centre	1800 199 228 familycourt.wa.gov.au/_misc/contactus.aspx	General information about applying to the Family Court of Western Australia.
Family Law National Enquiry Centre	1300 352 000 https://www.fcfa.gov.au/contact-us	General information about applying to the Federal Circuit and Family Court of Australia (except for WA – see above) .

Online Safety Resources		
WESNET	Women's Technology Safety & Privacy Toolkit	A resource designed specifically to help women experiencing or at risk of technology-facilitated abuse.
eSafety	eSafety Women website	A range of resources to support safe use of technology including online banking websites.

Attachment B: Property pool worksheet

Asset	Value (\$)	Debt	Value (\$)	Net Value (\$) (asset minus debt)
Example: Car – X Make and Y model	8,000	Car loan in A and/or B's name – X make and Y model	4,500	3,500
Example: House – 123 Example Street	1,000,000	Mortgage	800,000	200,000
Total	\$	Total	\$	\$
TOTAL Net Property Pool				\$

Attachment C: Property split worksheet

PROPOSED PROPERTY SPLIT	PARTY A	PARTY B	TOTAL
Net property pool \$: (asset minus debts - taken from final line of property pool worksheet)			Example: \$277,000
Property split:	%	%	
Example:	65%	35%	100%
Property split: \$ value	\$	\$	
Example:	65% of \$277,000 = \$180,050	35% of \$277,000 = \$96,950	277,000
Property split: assets			
Example:	Proceeds house sale \$150,000	Car \$18,000	
	Super \$25,000	Super \$85,000	
	Furniture \$5,000	Motorbike \$6,000	
Total	\$180,000	\$109,000	
Property split: liabilities			
Example:		Car Loan \$12,000	
Total		\$12,000	
Net Property split (assets retained minus debts retained)	\$180,000	\$97,000	\$277,000

Attachment D: Important documents checklist

Depending on your circumstances, some of the documents listed below may not apply to you.

If you are worried about your safety, call 1800RESPECT (1800 737 732) for advice before gathering these documents.

Financial documents	
<input type="checkbox"/>	Home loan or mortgage statements
<input type="checkbox"/>	Tenancy agreements
<input type="checkbox"/>	Insurance policies and payment notices
<input type="checkbox"/>	Council rates notices
<input type="checkbox"/>	Car registration
<input type="checkbox"/>	Investment statements
<input type="checkbox"/>	Government benefit statements
<input type="checkbox"/>	Bank account statements for all bank accounts
<input type="checkbox"/>	Superannuation statements and/or fund details if no statement is available
<input type="checkbox"/>	Tax returns for the last three years
<input type="checkbox"/>	Financial documents relating to a small business (including as a sole trader) that either party operates including business activity statements
<input type="checkbox"/>	Current statements for any debts
<input type="checkbox"/>	Outstanding bills and utility account details
<input type="checkbox"/>	Service contracts
<input type="checkbox"/>	Loan contracts
<input type="checkbox"/>	Any notice from your lender/s
<input type="checkbox"/>	Property title deed (if you have it)

Personal documents

<input type="checkbox"/>	Birth certificates
<input type="checkbox"/>	Centrelink or healthcare cards
<input type="checkbox"/>	Driver's license
<input type="checkbox"/>	EFTPOS or credit cards
<input type="checkbox"/>	Immunisation records
<input type="checkbox"/>	Marriage certificate
<input type="checkbox"/>	Medical history or important medical documents
<input type="checkbox"/>	Medicare card
<input type="checkbox"/>	Passports
<input type="checkbox"/>	Prescriptions and any medications
<input type="checkbox"/>	Wills and Power of Attorney

