

When you're going through a separation, there's a lot to think about. Sorting out your finances and working out arrangements for your children are likely to be the key issues you're dealing with. To help you out we've created a guide to assist you through some of the key issues that may arise. And if at the end of reading this if you still need help we are able to assist.

Firstly we encourage you to book an initial appointment with a family lawyer, as soon as possible.

A divorce and/or property settlement is a legal process. A family lawyer is a specialist in this area and is able to provide essential advice about how property will be divided between spouses and your rights concerning your children.

While the support and advice of friends, and self-directed research is useful, you should make an appointment with a family lawyer as soon as possible to understand how a divorce and/or property settlement works and obtain advice about care arrangements to be put in place for your children and financial support for you, your former partner and your children.

An initial appointment with a family lawyer will be entirely confidential between you and that lawyer. They can also help you identify which of the items on this list may apply to your situation. The list is not a comprehensive guide to all issues you may confront when going through a separation. Any advice in this publication is of a general nature only and has not been tailored to your situation. Please seek professional advice.

PROPERTY SETTLEMENT AND FINANCIAL TIPS

1. Collecting information

- **Get bank statements**

As soon as possible, get copies of statements for all bank accounts (held jointly and individually by you and your partner). Once accounts have been closed (or if they're in the other party's name) it can be difficult to gather information. If you have paper copies of statements, make copies or scan them. If you haven't kept these records, you may be able to download statements or a list of transactions via Internet banking.

- **Super statements**

Get copies of recent superannuation statements — whether it is your own superannuation or your partner's.

When you're organising a property settlement, superannuation is one of the assets to be considered as it is able to be split and adjusted between spouses. If the superannuation assets are in the name of your partner and you know the name of your partner's superannuation fund, you can apply to the trustee of the super fund to get information on their member entitlements for family law purposes.

- **Payslips (going back 12 months, to capture variation in pay)**

The earnings of you and your former partner are relevant in defining a property settlement, so having recent payslips will make this much more straightforward to figure out.



Get at least 12 months of payslips for both you and your partner. If your former partner works as a casual employee, they may have been paid penalties and overtime loadings that vary from one period to the next. Similarly, if they work as a consultant or contractor, their pay may vary significantly. These pay slips will also provide you with a good record of earnings before you separated.

Payslips may not be available if a party is self-employed or in receipt of Trust income. In these circumstances tax returns and financial Statements can verify earnings.

- **The last three years' tax returns**

Not entirely sure what you or your partner earned? Or maybe you're not sure where the money came from: employment earnings, company dividends, investment property rent or family trust distributions? Tax returns can help here. Like bank statements, tax returns can also be a useful starting point for further enquiries about identifying assets or income streams.

- **Rates notices**

If you own your own home, you may have been out of the rental market for several years. So when a real estate agent asks for references from previous landlords, you may not have anything to show them. Rates notices on your home will show landlords why you may not have references. That makes it much easier to rent a property by yourself.

- **Are there trusts, businesses or company directorships in place?**

We want to know what other financial interests you or your partner may hold. Trusts and corporate entities are fairly commonplace due to tax minimization strategies, limitation of liability strategies and asset protection.

Trusts

Do you know if you or your partner are the beneficiaries of a trust that holds investments or operates a business? A trust is a structure that holds assets and sometimes operates a business, on behalf of the beneficiaries. Beneficiary entitlements may vary. They can be fixed (eg: where they have a pre-determined entitlement). Alternatively, they may be discretionary (the trustees determine which eligible beneficiaries are to receive the benefit of trust assets and income).

A trust might have been set up by you and your partner to operate a family business or hold investments. Another possibility is that a trust may have been set up by a family member, with payments distributed to you and other beneficiaries.

The first place to look for information would be past tax returns, as distributions made to you or your partner should have been declared in previous tax returns. The Trust Deed is also important in establishing the Appointor, Trustees and beneficiaries of the Trust. This may assist in determining control of the Trust and ultimately whether the Trust assets can be divided between the parties.

Many Family Trusts hold shares in family-operated business.

Are there businesses or company directorships?

If you or your former partner are involved in the operation of a business, it's a good idea to have a clear picture of the way that business is structured. There are a few possibilities here:



Private company: there will be shareholders in the company often one or both of the parties.

Sole trader: all business is conducted in the individual's name.

Partnership: two or more individuals have joined together to operate a business. Bear in mind that in the case of a partnership, each partner is 'jointly and severally' liable. This means that the actions of one partner can impose obligations on the other(s). Looking at tax returns will help you find out what business structures are in place.

- **Have any large lump sums of money been received in the past?**

Large lump sums of money received in the past by either party may be relevant to any property settlement. Documentation that outlines the amount of funds, when they were paid and for what purpose can be useful. Lump sums may have arisen from:

- Personal injury and insurance settlements
- Individual contributions of assets from prior to the relationship
- Family loans, gifts or inheritances
- Windfalls and lottery wins

- **Think about mail and email arrangements**

If you were operating a business or out of choice, you may have been using a PO Box. If one member of the now separated couple decides to keep the PO Box, make sure business and your personal correspondence isn't still being sent there.

You may not want your now ex-partner receiving your mail anymore, if you haven't yet moved out of the home. You might consider establishing a new PO Box or updating your mailing address to that of a friend or relative.

A mail redirection isn't fool proof, but can also be useful to ensure no one else is able to access your private information. If you're considering a new email address to prevent your former partner from accessing your personal emails, many email services will allow you to set up a rule to forward all emails from your old address to the new email account.

2. Debt

- **Credit cards**

If you hold a joint credit card, or your former partner is a secondary cardholder on your account, consider changing this arrangement as soon as possible.

The last thing you want is for your former partner to run up debts in your name. If you're in this situation, talk to your bank or financial institution about cancelling joint accounts or removing secondary cardholders.

You may also have automatic direct debits set up from credit card accounts to pay important bills. If the change involves getting a new credit card you may need to update these details with service providers.

- **Other joint debt that could be drawn**

Do you have a mortgage offset or redraw account? What about a line of credit that might have been used for investing?



If you have joint debt facilities and are worried that your former partner may transact on them, talk to the financial institution. Make sure that any subsequent transactions require approval by both parties. Alternatively, arrange for the account to be frozen.

Remember, prevention is far better (and less expensive!) than a cure.

- **What consumer contracts are in your name (phone, internet etc)?**

We sign up to so many different subscription services, many of which grant an authority for the provider to automatically debit our accounts. Think about:

- Utilities such as electricity, gas and water
- Phone and internet contracts
- Car leases and fuel cards E-toll tags and public transport cards
- Digital entertainment subscriptions such as Netflix, Foxtel, iTunes and Spotify
- Personal loans
- Motor vehicle loans / novated leases / hire purchases
- Afterpay / Buy now – pay later

3. Controlling your money

- **Authority to operate bank accounts**

Did you know that for many banks and credit unions, the default set-up is that authorising a transaction only needs approval from one party?

If you are worried about your former partner transacting on joint accounts with a significant balances, talk to your financial institution about requiring two-party approval. Bear in mind that introducing this step may affect the ease as to how you conduct your internet banking.



- **Open a new bank account**

If you have been using joint bank accounts for all of your day-to-day banking, you'll probably need a new bank account. Check if your current bank or financial institution already has all of the required ID and personal details on file from your joint accounts. That makes opening a new account much more straightforward.

- **Redirect your pay**

Once you've opened your new bank account, contact your HR or payroll section to arrange for the deposit of your salary into that account. Don't forget that with payroll cycles, it might take up to a fortnight for the change to go through.

If you have got individually-owned investments (such as a property, shares, or managed funds) you should also want to get this income re-directed to your new account.

- **Save for a rental bond**

Residential tenancy agreements are governed by State and Territory laws, so they do vary, but generally a rental bond equates to four weeks' rent.

This means that if you're looking at a property with a rent of \$500 per week, you will need to have a \$2,000 rental bond saved before you can rent it.

- **Create an individual budget**

In the middle of all of the upheaval, bills still need to be paid and food put on the table. If you don't have one already, start with an individual budget.

This can be as straightforward as adding up the regular periodic bills including: insurance, utility bills, rent or mortgage payments and the weekly grocery bill. You can then start to track how your actual spending is matching up with your estimates.

One of the main benefits of a budget is so that you can plan in advance for payment of the bigger bills that come in less frequently (like car registration or body corporate bills). You can work out the annual total and then divide this into a weekly or fortnightly amount that you need to save.

- **Create a joint budget with your ex-partner for children's expenses**

Just like an individual budget, you may want to create a joint budget that outlines expenses for children, which you and your former partner will assume responsibility for or share. Costs include:

- School or child care fees
- Uniforms
- Text Books and Stationary
- Clothing
- Ancillary education expenses including camps and excursions
- Birthday and Christmas presents
- Tutoring
- Music lessons
- Computer levies
- Sports Fees

4. Future planning

- **Understand how family rebates and benefits will change**

If you're raising children, you may have received various government payments. These payments include Family Tax Benefit and Child Care Rebate or Benefit. Separating from your partner can affect what payments you're entitled to, particularly if care arrangements change. Contact Services Australia to notify them of the change and determine your new payments.

- **Update super beneficiaries**

A long time ago, you may have filled out a form nominating your former partner as the beneficiary for your superannuation.

Separating from your partner won't necessarily cancel this nomination. Complete a new nomination so that if anything happens to you, your super is passed to the beneficiaries you choose. Bear in mind that many superannuation policies also include life insurance, so even if you haven't accumulated a large super balance, the nomination could also apply to a life insurance benefit.



- **Life insurance ownership and beneficiaries**

Life insurance policies may be held in your name, but owned (and paid for) by your partner. Check this with your life insurance company. It's also possible that even if you own the policy, you may have nominated your former partner as a beneficiary. Check that this is up to date as well.

- **Review your Will**

A separation does not necessarily revoke your will. So in setting your mind towards your future, remember to make sure your will reflects your new circumstances. It's worth seeking legal advice to draw up a will. If anything were to happen to you, this helps you plan how your estate will be used to look after your children and how you wish to distribute your assets.

- **Review (and consider revoking) powers of attorney**

A Power of Attorney gives somebody else the ability to make decisions and complete transactions on your behalf. If you have granted a Power of Attorney to your former partner, consider reviewing or revoking that power.

- **Passports**

If you're planning to get away for an overseas holiday, does your name match what's on your passport? You want to avoid getting all the way to the airport, then being held up at Passport Control. You can have a replacement passport issued free of charge, so long as your existing passport is valid for at least two more years.

If you are vacating the family home, you should consider taking your passport and the children's passports. You should also take your marriage certificate and birth certificates.

- **Update Medicare bank details & Medicare Card**

It's an easy one to forget — but when you lodge a Medicare claim, the payment will likely be made to a bank account you have previously nominated. If you have forgotten to update your details, that could now be a bank account that your former partner controls!

Once you have set up your new bank account, log into Medicare and update your bank details online. You should also have everybody who needs to be listed on a Medicare card. Sometimes one partner, particularly one who doesn't have primary care of children, might get their own Medicare card but not think about including the children on that card. The moment you find out it would have been easier to have everyone on the card, is not the same time you needed to use the card!

5. Parenting Arrangements

If there are children of the marriage under the age of 18 years, you should work out appropriate arrangements with your former partner concerning the care, development and welfare of your children. Major decisions relating to the children should be made jointly, including those relating to their education, health, religious observance and travel Interstate and overseas.



There is an expectation that parties should engage in family dispute resolution (mediation) aimed at working out mutually-acceptable arrangements for the care of children if they are unable to work them out themselves. A referral to a family dispute resolution service is something a family lawyer can arrange. Alternatively, they are able to negotiate parenting arrangements on your behalf.

6. Financial Support

Child support is a statutory right, meaning that the parent with whom the children live primarily is eligible to receive financial support from the non-primary care parent.

Child support is administered by Services Australia and you should contact them to seek an assessment of how much you or your former partner will need to pay.

It is possible to enter into a private arrangement with your former partner concerning the payment of periodic child support or contributions to non-periodic payments including school fees, uniforms, camps, excursions, levies and extra-curricular activities and out-of-pocket allied health and medical expenses for the children and this is something you should discuss with a family lawyer.

A partner may be eligible to receive financial support from their partner due to health issues and or being the primary carer of children. It is possible that you may be eligible to receive spousal maintenance, however this is based on you establishing a need and your former partner having a capacity to pay.

Spousal maintenance may encompass a periodic payment or in-kind support such as your former partner paying the mortgage attaching to the former matrimonial home, rent, utilities, insurance and rate payments on your behalf.

You should speak to a family lawyer to obtain advice on your entitlement to receive financial support from your former spouse.

7. Next Steps

Feeling overwhelmed? Worried about making mistakes? We've got you covered.

If you require assistance from a family lawyer, please contact Vic Rajah Family Lawyers for a complimentary 15 minute fact-finding call to put you in touch with one of their solicitors to provide you with essential advice concerning your separation. During this call we will schedule a one hour session with one of our lawyers for in depth guidance and strategies aimed at supporting you through your separation.

[Click here to get in touch with our office to schedule your fact-finding call](#)

