Legal tips to protect your finances

During different Stages of a Relationship

Aneta Dimoska Di Marco
CEO & PRINCIPAL

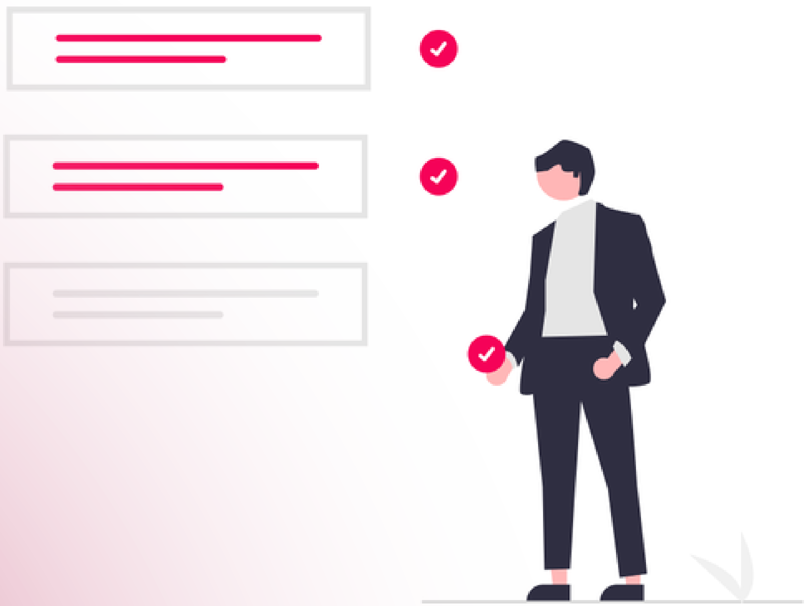
HERAS
FAMILY LAWYERS

Hints and Tips

For general information only

The following hints and tips are given as steps you can take towards protecting your finances in the event of a separation. It is general information only and may not be suited to your specific needs. Always seek legal advice to ensure that your particular circumstances are met.

Email us at info@heraslaw.com



Relationship Stage

Some of the tips and hints will be more relevant to people at an earlier stage of their relationship. The longer you are in a relationship with someone, the more likely the Family Court will deem the parties intended to have a shared financial life.

Property division at separation is based on the kind and degree of contributions each party makes towards the assets of a relationship. These can be financial or non financial, meaning it may not matter if one person earns more money than the other.

With longer relationships, the Family Court may find that financial and non-financial contributions over the course of the relationship are fairly equal. This would be the case unless one party makes significant contributions during the relationship or has brought significant initial contributions to the relationship.

A financial agreement ousts the jurisdiction of the Court to prevent a party from making a claim against the other party. However, in certain circumstances a financial agreement can be set aside. What this means is that there is no bullet proof method of ensuring your former spouse won't be entitled to assets and finances you have accrued.

The best approach is to be as transparent as possible with each other and take steps to properly plan how property and finances will be divided.

Children

Having children also changes the nature of the relationship. The Family Court acknowledges that when people have children there is usually an intention to build a life together and to share finances.

Ultimately what the court decides in your case depends on the individual circumstances of the parties and there are no presumptions about finances or property division in the Australian family legal system.

Key Stages of a Relationship

There are no specifically defined lengths in family law for what is considered a short, medium or long relationship. The Court looks to the nature and characteristics of the relationship.

People are redefining relationships. Some people may live together just on weekends for work reasons and consider themselves to be in a de facto relationship. Others may live together and have children together, acting as co-parents, but not consider themselves in a relationship.

To discuss your individual circumstances contact us on info@heraslaw.com

There are some general guidelines about how the Court treats different relationships based on their characteristics:

FINANCIALLY INDEPENDENT

- You are in the first 5-6 years of your relationship but also longer relationships where finances remain separate
- Haven't purchased a property together
- No children
- One party is not financially dependent on the other

FAMILY FOCUSED

- Usually finances are shared and you have a joint bank account
- Your home is in joint names and expenses are shared or one person is the primary bread winner and the other is the homemaker and either does not work or works part-time
- You have 1 or more children

ESTABLISHED FINANCES

- Long relationship - about 15+ years
- Established career
- Children usually teens or adults
- Greater focus on ensuring financial security for retirement
- You may have more than 1 property and/or other investments

Snapshot Guide

Entering into a relationship is like entering into a businnes partnership. Planning and setting expectations early will avoid a siginificant degree of animosity and hostility later on.

What should you be doing particularly if you are in the early stages of a relationship?

Wills & Super

Independent financial planning

Separate finances

Keep a sole account

Debt

Does sharing debt benefit you or your spouse?

Valuations

Value initial contributions

Transparency

Set clear expectations

Agreement

Enter into a financial agreement early in the relationship

Transparency

Set expectations about finances

Some people find it difficult to talk about finances in a relationship. However, ask yourself this. If you can't talk about finances now, what is the conversation going to be like if you separate in the future? Some of the matters that you should be talking about include:

- how are day to day expenses going to be paid or shared?
- is one person going to be paying the mortgage while the other person's income is used for day-to-day expenses?
- if one or both parties have existing pre-relationship assets, are these to be kept separate from joint assets? Will the other party be helping financially or in the maintenance of the property?
- if you purchase property during a relationship is this intended to be a joint asset regardless of who pays and which name the property is bought under?
- if there are non-real estate big purchases are you going to share the cost equally or in proportion to the amount of income you're bringing into the relationship?
- if one party owns a business, will the other party play a role and will they be fairly compensated for that role?
- if you have children, do either of you or both of you want the children to attend a private school?

Valuations

Value your assets and liabilities at the commencement of the relationship

It's important that each party knows what they're financial position is before they commence living with someone. What are your financial assets, what are your liabilities, what is your income and what are your expenses? You should also start thinking about any potential future financial resources such as inheritance or any business gains. If you are already in a relationship, then get an idea about your financial position from the commencement of the relationship.

"Initial Contributions"

Draft an assets and liabilities table for the date that you commenced residing together and use market values from that date. This will give you evidence that you can rely on in the future regarding the assets you have brought into the relationship. These initial contributions can be taken into account by the Court to increase your entitlement to the property pool. Initial contributions are given more weight for shorter relationships.

Separate finances and avoid "contributions"

Avoid intermingling financial affairs unless you are prepared for a business partnership

If you separate from your partner, all income sitting in bank accounts whether in your sole name or jointly with another party, are considered property of the relationship if the funds were accrued during the relationship (either directly or indirectly). What's yours is his/hers, and what's his/hers is yours. However, when making decisions about whether property interests should be adjusted one thing the Court will consider is whether the parties structured their financial affairs so there was no intermingling of finances. This this will usually only be relevant where both parties are on relatively equal financial footing and usually only for shorter relationships.

Sole bank account

Keeping a sole bank account has several benefits in the event of separation. It can be difficult to access cash if the other party puts a freeze on the joint account or requires two signatories to make a withdrawal, and you will likely need access to some cash in the event of separation.

Separate finances and avoid "contributions"

Pre-relationship assets

Ensure that there are no financial or non-financial contributions for your sole asset that can be traced back to your spouse. Do not let them contribute towards bills or mortgage repayments. Ensure they don't contribute non-financially through maintenance of the home, renovations, cleaning or gardening.

Do not direct your money towards paying a pre-relationship asset while your spouse's income goes towards all the day to day expenses - this will be counted as an indirect contribution on their part.

If your partner is living with you in your sole property, ensure that they pay you rent or board in the amount any other tenant would pay. You should both make fair contributions to joint daily expenses either equally or in proportions to your incomes.

Use trusts wisely

Trusts are often used for asset protection and to minimise tax consequences but may not suit everyone's needs. Seek advice from an accountant.

If you do wish to use a trust, ensure that the control of the trust is structured in a manner that the Family Court will not deem the trust to be under your control, or the control of both you and your spouse. If it is, the assets of the trust could be viewed as assets of the relationship.

Debt

Avoid sharing debt

You don’t automatically inherit your partner’s debt when you marry or enter into a de facto relationship. However, if you start sharing debt and credit facilities, you will likely find yourself legally liable for their expenses. So don’t have joint credit cards, don’t add your partner as an authorised user, and don’t let your partner use your credit card. If your partner is unemployed, they may still be entitled to apply for a low-income credit card, or you can obtain a separate credit card with a limit on the card. If you are the wealthier party, you should avoid permitting your partner an unfettered capacity to accrue debt.

Conversely, if you are completely or partially financially dependent on your partner, you would benefit by being an authorised user on their credit card because they will be solely responsible for the debt as legally it is in their name.

Regarding division of assets, the Court will look at whose name is on the mortgage and whether contributions were made towardsa house. Therefore,just because

Agreement

Obtain a comprehensive financial agreement

Financial agreements are technical documents requiring careful drafting an independent legal advice for both parties. They can set out expectations for the sharing of finances, property and expenses both during cohabitation and post separation.

You and your lawyer should ensure that the following circumstances can be evidenced when preparing your fincial agreement:

- That both parties have had ample opportunity to review the proposed agreement and that time was permitted to negotiate amendments
- That each party had the opportunity to select their own lawyer and had time to reflect on the independent legal advice received.
- Preferably each party pays for their own legal costs.
- That there are no conditions attached to the agreement such as a threat that the marriage won't proceed without the agreement
- That there was no other form of pressure imposed on any party to sign the agreement
- That the nature of your relationship is such that there is no imbalance of power
- That there is an equal financial position between the parties, or if this is not the case, that there is fair provision in the agreement to the party in the reduced financial position.
- That each party was rational, calm and sane during the process, and does not suffer any other disadvantage which would impact the process including being from a vulnerable population.

Wills & Super

Avoid evidence of intent to provide for the financial security of your spouse

The court can at times look to whether a person has drafted a will and provided for their spouse as a beneficiary in that will or alternatively included them as a beneficiary in their superannuation death benefits or a life insurance policy. If provision has been made for a spouse in these avenues, the court could determine that you and your spouse intended to live a joint financial life.

If you want to avoid the Family Court determining there was any intention to have a joint financial relationship, there should be no evidence of any financial planning for the future security of your spouse.

Therefore:

- draft a will that provides for other people in your family to receive your assets
- purchase property as tenants in common rather than joint tenants
- leave superannuation death benefits to other people in your family
- Do not take out a life insurance policy with your spouse as the beneficiary

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Questions?
Contact us.

www.heraslaw.com.au
info@heraslaw.com.au