

## Separation and debt

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There is a lot of stress around the economic realities of separation. Expenses often increase.

Most people have debt. Whether it be a mortgage, personal loan, hire purchase debt or credit cards.

### **Do I have to pay half of the joint debts of the relationship?**

From the lender's perspective, it does not matter who pays, as long as repayments are made.

It may be that one of you is more financially able to pay for the debts of the family than the other (for instance, one of you might not be working).

The fact is that from the lender's perspective, they are not interested in the family law dispute, only that they will be paid.

So, this means if one of you cannot pay, the lender will approach, or sometimes chase, the person who can financially pay the debt.

### **Do I need to pay debts that are solely in my partner's name?**

No.

### **Can I get an order saying I do not have to pay the debt?**

From a family law perspective, no. However, sometimes the court may order that the person with funds pay the instalments of a debt initially, or give you money to help you pay the debt.

**We can discuss your options with you.**

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### **Plan for the short term**

It is natural to feel hurt after separating. But, you both need to be financially responsible.

If possible, write out a list of all the debts and your respective income. Also, write out your budgets for each of you. Discuss and come to an arrangement with your partner about:

- how the debts are paid;
- whether something should be sold;
- what you each need to re-establish yourselves; and
- most importantly, what the children need.

**If you need help with budgeting, we can refer you to experts who assist couples with money management during separations.**

### **Can I just do nothing and hope my partner pays?**

No.

### **What options do we have in helping us to pay our debts?**

Sometimes, the lender may give you a period of time where you do not have to make repayments (although the interest will continue to be applied increasing the debt owed). These types of arrangements are generally only for a short time (e.g. 3 months, etc).

Another option is that family or friends may be able to financially assist you.

Again, one option could be to sell an asset to reduce debt.

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### **What if I am a guarantor?**

If you are a guarantor you are liable for the debt owed if the other person named on the loan does not pay.

If you cannot pay the loan, then the lender can start court action to recover the amount owed from you.

**We can advise you regarding your options.**

### **Bankruptcy**

If you are worried about you or your partner filing for bankruptcy then you need to seek legal advice regarding how this will affect you. This is because the property of the person who becomes bankrupt will be controlled by a “bankruptcy trustee”. Also, the person who goes bankrupt cannot generally be involved in court proceedings (there are exceptions).

### **Can a partner who is bankrupt seek property from me?**

Generally, a person who is bankrupt cannot start court proceedings seeking property division. There are exceptions.

**We can advise you regarding your options.**

### **Can the bankruptcy trustee seek property settlement from me?**

If you are already in court, then it is possible for the bankruptcy trustee to seek an order that you transfer property.

### **Can I seek a property settlement from my partner who is bankrupt?**

Generally, yes but you will need to tell the bankruptcy trustee that you have filed court proceedings or otherwise negotiate with the bankruptcy trustee.

### **What you need to do if you or your partner is bankrupt or about to be bankrupt**

You need to seek legal advice immediately.