

# We've Got You



Separation and divorce can be overwhelming. As well as the rollercoaster of emotions there are many logistical and financial decisions to be made.

With thoughtfulness and planning, you can emerge from the process with certainty, stability and confidence in your financial situation.

As part of your divorce team our mission is to be here for you to provide education, support and guidance through this life transition, so that we can help you move confidently towards financial independence. We will help build a team for you so that you can access the right professionals at the right time and we'll all work together to help make you stronger and ensure your best interests are protected.

## absolute

Paul

The information contained in this publication is general in nature and does not constitute either legal or financial advice. Individuals should each seek their own legal and financial advice from professionally qualified service providers, which pertains specifically to their individual circumstances.

#### How to Use This Guide

- 1. This booklet is designed to take you through the different stages of divorce or separation step-by-step and to give you one place to keep all of your thoughts, questions, worries and to-do lists.
- 2. It is a good idea to bring this guide with you when meeting with us and your lawyer. It will help you optimise the time you spend with us and will help us secure the best outcomes possible for you.
- 3. Most clients also find that as soon as they have left a meeting with their lawyer or other advisers that they have additional questions, or that they have forgotten to talk about something that came to mind days or weeks ago. Keep this booklet handy over the coming months so that you can jot down your thoughts, questions and concerns as they spring to mind.
- 4. The cover folder is a great place to store additional notes or documents which are relevant for meetings or needed for tasks on your to do list.
- 5. We've divided this guide into 3 easy to navigate sections as below:

#### The 3 Ps of Divorce

The 3 sections of this guide will provide you with the right framework to address one thing at a time. **Personal** takes care of your SELF, **Property** takes care of your FINANCES and **Parenting** takes care of your KIDS.

#### **PERSONAL** - SELF CARE

With such big changes brought about by a separation it is expected that you may feel anxious and unsure about how to approach what feels like a totally foreign situation. The green section of this booklet will give you some pointers as to how to keep both physically strong and mentally centered during and after a separation when stress levels will understandably be at their peak.

#### **PROPERTY** – YOUR FINANCIAL SETTLEMENT

Financial settlements can be complex - so we have broken it down into 5 different stages that we will move through with you - one step at a time, towards a life of financial wellness and independence on the other side. The yellow section of this booklet provides some in depth information relating to your rights and obligations, some useful checklists and financial workbooks, which will help you to determine the outcome of your property settlement.

#### PARENTING - YOUR AGREEMENT OR ORDERS

The blue section of this booklet provides an overview of your rights under family law, your obligations in relation to child support and the options available for settling your parenting arrangements. We take you step by step the process - from what to do for your children when your first separate through to the finalisation of your agreements for ongoing care and financial support.

Contacts

JOB	NAME	DETAILS
YOUR LAWYER		EMAIL
	PHONE	ADDRESS
EX-SPOUSE LAWYER		EMAIL
	PHONE	ADDRESS
EINIANICIAI ADVICED		EMAIL
FINANCIAL ADVISER	PHONE	ADDRESS
	HONE	ADDRESS
CHILDCARE		EMAIL
	PHONE	ADDRESS
SCHOOL		EMAIL
	PHONE	ADDRESS
INSURANCE AGENT		EMAIL
	PHONE	ADDRESS
ECTATE LAWVED		EMAIL
ESTATE LAWYER	PHONE	ADDRESS
	THORE	EMAIL
MEDIATOR		
	PHONE	ADDRESS
COUNSELLOR		EMAIL
	PHONE	ADDRESS
REAL ESTATE AGENT		EMAIL
	PHONE	ADDRESS
ACCOUNTANT		EMAIL
	PHONE	ADDRESS
VALUER - REAL ESTATE		EMAIL
VALUEN - NEAL ESTATE	PHONE	ADDRESS
VALUER - BUSINESS		EMAIL
	PHONE	ADDRESS
		EMAIL
	PHONE	ADDRESS
		EMAIL
	PHONE	ADDRESS

### need financial advice?

In Sydney we recommend Absolute Wealth Advisers who have years of experience working with high-net wealth clients.

Their compassionate approach and their ability to make the complex simple with sound, logical advice, make them the perfect partner for us to work with to ensure you are looked after before, during and after the divorce or separation process.

### absolute

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**PERSONAL: SELF CARE** 



This is one of those times in life when you need to put your oxygen mask on first — and by that we mean your very first priority is to make sure you, and your children if you have them are safe and cared for.

- secure somewhere to live if you need to leave the marital home
- ensure that you have access to cash for ongoing living expenses
- secure initial arrangements for the care of your children

If you are having trouble with these issues let us know right away. This should be your first priority and will be our first priority in helping you.

Self-care is one of the most important activities to engage in during and after a divorce. Follow our tips to keep yourself sane and healthy and emerge stronger and ready to move forward into the next chapter of your life.

#### **DIVORCE WITH DIGNITY**

Sometimes one partner wants to separate more than the other. It is important for the partners who are more reluctant to realize that staying with someone who is unhappy with them will cause them suffering as well.

By getting everything out in the open, partners can often mutually recognize and agree on the best decision for them which helps prevent resentment and feelings of having been a victim going forward.

#### FOCUS ON THE BASICS

Help your emotional system cope with stress and help your mind integrate the changes during divorce by prioritising your sleep and a healthy diet. Avoid drugs and alcohol and aim to fit in 20-30 minutes of daily exercise which will help channel your emotions through physical activity.

#### FACE YOUR FEARS

Reduce any anxiety you may be feeling by confronting any worst-case scenarios you may be worried about.

Follow these steps

- 1. Map out worst-case scenario(s) for your divorce
- 2. Write down what you would do if they happened
- 3. Write down who you can reach out to for help



Whether you are feeling afraid of moving on, worrying about finding a job, or learning how to live alone, the more you analyze your fears and why you're feeling them, the easier it will be to educate yourself and take action. Being prepared and putting plans in place is empowering. When you realize that you will be OK you will feel less anxious.

#### PRACTICE SELF-COMPASSION

Instead of criticizing yourself for various inadequacies or shortcomings, self-compassion means you are kind and understanding when confronted with personal failings. During the divorce process things will not always go the way you want them to. You will encounter frustrations, losses will occur, you will make mistakes, bump up against your limitations, fall short of your ideals. This is the human condition, a reality shared by all of us. The more you open yourself to this reality instead of fighting against it, the more you will be able to feel compassion for yourself.

#### PRACTICE ACCEPTANCE

Unhappiness comes from the divide between what we expect and what we have. Let go of thinking that this whole situation might feel OK soon. If the situation is bad enough, it might not feel OK until the kids are grown and left home and there's no need for you to talk to each other anymore. We all have within us the courage, strength and wisdom to deal with the challenges that life sends our way. Trust this and reach for it. Nothing we go through is ever wasted and it's important to be open to the learnings.

#### FORGIVE AND FORGET

Moving on from divorce can be just as challenging as the divorce process itself, so make it a little easier on yourself

and forgive where you can. Holding on to negative feelings towards your ex-spouse will make it harder to let go and start over yourself, so assuming the divorce process ended somewhat amicably, forgive your spouse for their part in it and let yourself move on.

#### TALK ABOUT IT

Talking about our feelings can help our brains process them, which allows us to move on more quickly and gracefully. Share your most powerful, negative feelings and impulses with close friends, extended family members and trusted therapists to get relief from the inner crazies divorce can bring up - but remember, that children in particular, should always be spared hearing negative comments about another parent.

#### CONNECT

An ended relationship is not necessarily a reason to go it alone for a while. We are social creatures and tend to do better when we have others with whom to share our lives. Isolating yourself can amplify negative feelings, so keep your social life active through sport or groups with common interests and stay open to new relationships that match your goals for a better life. Our minds and emotions heal more efficiently through meaningful connection with others.

#### **SEE THE BIG PICTURE**

It's difficult to keep in mind that a divorce can lead to a more enjoyable life. We are often so consumed by pain, fear and stress that we can't see past our momentary experience. Try to keep the big picture in mind. As time passes you will be free from both a hard relationship and the pain of ending it and have the freedom to express yourself in a way that better meets your goals for a happy, fulfilling life.



# Road to Success

What can you do to increase your chances of a successful outcome in your divorce?

There are two different ways to look at divorce. On the one hand, divorce can be financially disastrous, but on the other hand, divorce can be the opportunity to lock in a secure financial future. The difference lies in how you handle the process. And there are many things YOU can do to keep the odds of a fair, successful outcome in your favour.

#### PUT YOUR EMOTIONS ON THE BACK BURNER

Negotiation and mediation are about settling the business end of the marriage. Try to put your emotions aside and handle the business aspect of your divorce separately. It's time to think financially, not emotionally. The decisions you make during your divorce often have the potential to impact you for the rest of your life, so you'll need to think clearly about the important financial decisions ahead of you. Remain objective and practical. Seek financial advice to point you in the direction of a stable financial future.

#### **MAINTAIN YOUR COOL UNDER PRESSURE**

It's possible that both your ex and their lawyer may constantly attempt to press your buttons by going over and over the same issues. It's possible allegations and claims will be made that you don't agree with. Don't hand over your dignity by acting in ways that are beneath you. Stay calm, cool and collected. This is especially true, if you appear in front of a judge. Losing your composure or having outbursts of anger may severely compromise your case.

**PERSONAL: SELF CARE** 

#### **DELEGATE**

Recognize that you need help, for legal issues, financial matters and emotional concerns, and then organize a top-notch divorce team that can deliver results. Issue tasks according to professional abilities, so you can devote more of your time and your energy on taking care of yourself and your family.

Team up with an experienced financial adviser and you'll be able to approach this major life change with confidence. First, you'll need to shore up your financial position so you can enter the divorce process prepared. Then, you'll need to develop a solid strategy to help you emerge from your divorce in the best financial shape possible and face your future with confidence.

#### **STAY ORGANIZED**

Keep copies of everything. A file of monthly statements from your bank, brokerage and superannuation accounts, tax returns, credit card bills, should be independently maintained by you, not your spouse or their accountant. When you are armed with accurate, up to the minute information, you are a formidable and impressive opponent who makes decisions that are right for you and your children.

#### **KNOW YOUR FINANCES**

A successful divorce depends upon how invested you are in knowing about you and your spouse's financial circumstances, Know the answers to critical questions, such as:

- What are your assets?
- What does it cost to maintain your lifestyle?
- What are your expenses?
- What will it cost to send the children to school and university?
- What are your liabilities?
- How and where are your assets held?
- Is there a life insurance policy to protect you and the children?

Take out the unknown and provide your lawyer and divorce financial advisor with concrete information in order to obtain the results you want to achieve in the divorce.

#### **BE COOPERATIVE**

Just as it takes two to make a marriage successful, it takes two to make a divorce successful. Being uncooperative will only drag out the divorce proceedings and add undue stress to the situation. Be cooperative, and work with your ex to ensure

that both of you get your fair share.

#### **BE PROACTIVE ABOUT YOUR CASE**

Stay on top of your divorce matter. Dragging out a divorce for months only extends the emotional trauma and the cost. Reply to requests promptly and as succinctly as possible. Keep things moving along.

#### **BE OPEN TO MEDIATION**

Even if the idea of sitting down with your ex to hash things out civilly doesn't sound appealing to you, you would be doing yourself a disservice if you avoided mediation altogether. You may not be able to settle all of the issues out of court but resolving even just a few matters can save you money, time and emotional stress.

#### BE MINDFUL OF THE NEEDS OF YOUR CHILDREN

While you may be hurting and you may be angry, it's important not to speak ill of your ex in front of the children. You married your ex, but your children did not. Children should never be forced to take sides between parents. The issues that plagued your relationship should not encumber your children's relationship with your spouse. Never ignore your child's feelings or be convinced that your children don't need both parents in their lives. The long-term impact of cutting a parent out of a child's life is extremely harmful.

#### **BE CERTAIN**

Never make a decision in a divorce without fully understanding the ramifications. Research as much as you can and talk to your lawyer about the possible consequences. The more information you have and the better your understanding of the situation, the better the outcome will be.

#### **BE REASONABLE BUT FIRM**

Compromise is always a good thing in divorce and you should set realistic expectations. It is unlikely that you will receive absolutely everything you wanted to, but you should never settle for less than you deserve or need.

#### **BE HONEST**

Be fair and honest about your needs and capabilities whether you'll be on the giving or receiving end of spousal maintenance and/or child support. Lying and making false accusations will not help your case and will almost surely backfire at some point. Falsely accusing your spouse of drug use, verbal or physical abuse will only complicate the situation, and may cause a judge to revoke your visitation privileges if the lie is discovered.

## High Conflict?



### What to do when things get ugly.

There is no denying that some divorces are harder than others and sadly not everyone plays fair. It is possible that your ex might resort to dishonesty, manipulation and psychological abuse to win at all costs. But while their actions are out of your control, there's power in preparing yourself for the fight, especially when you know your divorce is already contentious.

- The first thing to do is to recognize a scheme and power play when you see it.
- The second thing is to not lose your cool and try to fight fire with fire. It will only cause things to escalate and your whole family will suffer.
- Act by alerting your lawyer to any of the red flags we've listed below so they can take positive steps to counter your spouse's power game.

Below is a list of things angry exes do which are the red flags to watch out for.

- They attempt to settle without disclosure
  It is usually the case that one spouse has a much
  greater knowledge and understanding of the assets,
  their values, incomes and overall financial wealth of
  the marriage. That knowledge is sometimes used, in
  conjunction with representations of "I am being fair"
  and similar terms, to encourage the other spouse to
  enter into an early settlement, sometimes without legal
  representation to assist.
- They withhold, distort and conceal information.

  Sometimes spouses use deceptive tactics to hide their income. They might tell you that they're only making enough money to survive when, in fact, they are earning a great deal more, and they're hiding it in a secret bank account. Spouses might also attempt to hide their assets within a small business, by purchasing gold or making other types of investments.
- They maintain a lavish lifestyle that contradicts their income statement. Something could be off if a spouse who claims he or she is not earning much money still manages to live very comfortably, go on extravagant holidays and lives in a nice house. Uncovering a hidden bank account could show where the spouse is sourcing the money to fund this lifestyle.

- There are inconsistencies in financial accounts especially if there are large transfers or regular monthly
  withdrawals that don't seem to make sense.
- They drain your joint bank accounts
- They max out shared credit cards
- They change online accounts and passwords for no real reason and you are not allowed the new details so you have no access to the information.
- They transfer property or shares to children/ family members
- They make unusual cash withdrawals and change spending behaviours. You may notice an unusual pattern of large sums of cash being withdrawn or money is moved from the accounts you know about (overseas accounts are a popular destination).
- They have overly expensive hobbies, a secret drug addiction, gambling habit or a romantic partner on the side. They could be funneling money into these addictions or relationships resulting in a significant drain on marital resources.
- They start making loans or to family and friends
   Or a debt you did not know about to a family member
   suddenly gets paid off. Both are signs that money is
   been funneled off before a divorce.
- They experience a sudden "drop" in income.

  The lifestyle previously enjoyed by your family suddenly becomes unaffordable. Your spouse has gone from being well-off to near insolvent and unable to pay for anything. These are sure signs of income deferral and divorce planning.
- Funds for your spouse's lifestyle continue to be available but funds for your lifestyle are dramatically reduced to minimize your future "income needs".
- There is a "reduction" in the value of their business or changes in business structure. If your spouse has their

**PERSONAL: SELF CARE** 

own business they may seek to manipulate (understate) the value of the business and the income that flows from it in an attempt to reduce the final divorce settlement. The finances of divorce are sometimes planned years in advance.

- They refuse to support the household until ordered to do so. This is one of the steps designed to "starve out the other spouse." The primary earner of the marriage retaliates after moving out of the family home and subsequently stops providing for the household. The goal is to put the other spouse in a financial position where he or she, out of desperation, will accept an unfair settlement.
- They try to control all negotiations.
- They do not follow the rules of the legal system.
- They ask for full custody of your children. There are situations where a spouse will request either full or 50/50 custody of the children to scare their partner into settling for less during divorce settlement negotiations. Your best bet is to offer split custody from the beginning. This takes away any leverage your spouse can use and it's in the best interest of the children to spend equal time with two parents who love them.
- They refuse to communicate with you. Discussing terms of the divorce privately is imperative to having a conflict-free divorce. By refusing to meet and compromise, they intend to create conflict, increase legal fees, and wear you down. It can also cause a serious break in parent-child ties if the non-custodial parent doesn't get to see the children because he or she can't set up any parenting time.
- They file bogus claims with the court. One spouse
  may file claims simply to take advantage of the court's
  bureaucracy in order to drag out the proceedings. They
  may be dismissed, but it will add to the amount of time
  spent in court, which can disrupt your life in many others
  ways financially or at work.

- It's not uncommon for one ex to file a restraining order against the other without cause. Although it's illegal to make false accusations of abuse, sometimes vengeful exes will employ this tactic to gain sole legal custody of children and/or have the accused removed from the marital home. Prevent this from happening by refusing to engage in any form of conflict, whether by phone, email, and in-person. If it's too late for that, don't respond to the allegations in a way that will make the situation worse.
- They renege on verbal agreements. Many people going through the divorce process work to make sure it's not filled with conflict, but that doesn't mean a spouse will stand by any verbal agreements the two of you had made. It's much safer to have a legal document drawn up and signed by both spouses and their lawyers. A document can be used in court to prove a spouse's intent to take part in a verbal agreement. If push comes to shove, you'll have evidence that can be used as proof that your ex intended for a particular action to take place.
- They deliberately prolong the divorce process. During the discovery process, your divorce lawyer will request documents from your spouse related to income and assets. An angry ex can stall the process by refusing to respond to these requests. They may be determined to wear you down over time and be prepared to outresource you through litigation. They sometime load you up with hundreds of unreasonable and irrelevant questions about the details of every single transaction in your records. These delaying tactics may continue right up to his refusing to sign the divorce papers. To protect yourself from a spouse who will stall and use the courts to abuse you, work with your lawyer to obtain a response when an ex uses such tactics.

If one or more of these red flags is present, or if there is suspicion of wrongdoing, then we may consider a financial investigation by a forensic accountant, or your lawyer may apply for urgent interim orders for the court to intervene to stop certain behaviour, or to ensure you are not financially disadvantaged prior to settlement.

## How Cope

### with a high conflict ex



- 1. First and foremost is to remember that the conflict is not about you. It is about their lack of self-management skills.
- 2. Seek support from friends and family (and possibly a counsellor) to help you maintain a sense of balance through the ups and downs.
- 3. Keep your communication calm and matter of fact with the other person, in writing and in person (and away from the children). When you show a lot of emotion or frustration toward narcissists and sociopaths, they feel empowered and will try to manipulate you more. Remember BIFF. Be Brief, Informative, Friendly, and Firm as much as possible.
- 4. Remember that everything in writing may be (and often is) used in a family law case as an annexure to an affidavit. Think about how a judge, psychiatrist or family consultant may perceive your tone in a written communication. If possible, give yourself plenty of time before you respond to inflammatory texts or emails better still leave, disengage and leave it to your lawyers to respond.
- 5. Keep everything. Save all text messages, voicemails and notes of phone calls, skype messages, social media

posts, letters and emails.

- 6. Keep a diary of important things that happen related to your case, especially incidents that may come out in court. Write things down the same day, with exactly what you said and what the other person said or did. This will help you counter any lies or distortions.
- 7. Don't allow yourself to be manipulated. Think logically and factually not emotionally. Get good at setting limits. Do not succumb to bullying by being too generous to make them go away. They will not. They will recognize your vulnerability to their attempts at control and will just push for more.
- 8. Play devil's advocate with your case. What arguments is your high conflict spouse going to make? Help your lawyer understand how your spouse may respond.
- 9. Don't get divorced on social media. Posting about your divorce on social media is always a mistake, and often one that's irreversible. Don't do it, especially if you have children. Your children are the victims in this situation, and if you post about the divorce on Facebook, it will get back to your children, who'll be upset to find their home life is something to be gossiped about among their friends and friends' parents.

## Mour

## Stepping Stones

The 5 stages of property settlement post separation - we'll take it one step at a time



#### 1. INITIAL SEPARATION

Focus on what's most important first. Stay calm and healthy. You'll get through this. Reach out to your support network and confide in those who you know will be the people you can rely on to support you through the process. Sort out your living arrangements, make a clear initial parenting schedule and make sure you have ongoing access to living expenses for yourself and your children. If you and your partner are unable to work through this first step your divorce team will be here to assist you.



#### 2. PRE-NEGOTIATION

Time to prepare for the process of settling on the details of your property settlement. It will help save time and money if you can get well organized with your documentation during this phase. Working with both your lawyer and financial adviser will ensure that you all have a thorough understanding of what's at stake, what can be negotiated, what it will mean for you and what you will need going forward when the matter is complete. You should start working with your financial adviser to develop a personal wealth plan which is designed for your new life and according your own values and goals.



#### 3. NEGOTIATION

During this phase we will piece together all of the information gathered during the prenegotiation phase and enter into negotiations via collaboration with your ex-partner and their legal representative (if they have one), or with the help of a professional mediator. If the parties are unable to find much common ground then the matter will most likely proceed via the Family Court, which is the most expensive and lengthy process. Although this phase is largely handled by lawyers it can be emotionally difficult. The best thing you can do is to stay calm and be very clear on the starting point (which is your best case scenario) and the end point (the very minimum you'll accept) for both financial and parenting negotiations.



#### 4. SETTLEMENT

A property settlement is an agreement between a couple who have separated or divorced, about how their property should be divided, which is registered in the Family Courts by way of a Court Order. Couples can either reach a Binding Financial Agreement which is not registered with the court, or if they cannot come to an agreement, the court has the power to make orders about how property should be divided. During this settlement phase, we will work with your lawyer to implement the agreements that have been reached between you and your ex-spouse, or by the court regarding finances. All parties are obliged by the law to act in accordance with the court orders and we will work with your ex-spouse's legal team to ensure all of the transfers of assets and property take place in accordance with the orders or financial agreement.



#### 5. MOVING FORWARD

Finally, the hard parts are over and this is the stage where you can turn over a new page and start fresh. It may well be time to take a well deserved holiday with family and or friends. Once the dust settles, you may find that your pool of assets and your life plan have changed significantly and at this stage, your financial adviser can begin to implement your personal wealth plan with new goals, new budgets, estate plan, insurance and investments.

**PROPERTY: NEXT STEPS** 

Things to do



Get organized

Divorce involves a lot of documents. (See our Document Checklist on page 20). You can save yourself a considerable amount of time AND MONEY by ensuring you and your professional team have quick and easy access to those documents. Consider setting up a shared filing system or a secure document vault for all the documents you'll need to collect, **Dropbox.com** or **Box.com** offer shared file solutions.

File your documents into categories. You can use the same categories as our Checklist - page 20 and make sure you name each file with a comprehensive name like:

John Westpac Jan-Jun 2020.pdf Joint HSBC Jan-Jun 2020.pdf

Some financial advisers already offer this solution for their clients and have a login system where families can get instant access to important information like wills, life insurance policies, healthcare documents, pet information, digital accounts and passwords when they need it most. **Everplans.com** offers an online comprehensive digital archive with industry-leading security technology. You can grant access to your information to select individuals and your professional advisers.

#### >> YOUR TEAM

Whilst you and your ex-spouse or partner may have been using the same professional advisers for some time, when couples separate and divorce it often represents a conflict of interest for professionals to provide services to both parties.

You may need to source your own divorce team. Depending on your situation, that team might include your own lawyer, financial adviser, accountant, mediator and counsellor. Existing professional contacts or friends can be good sources of referral. If you need some help we have strong working relationships with a network of caring professionals in Sydney.

Ask us for contact details.

#### >> YOUR SINGLE BUDGET

Being suddenly single can be a bit of a blow to your budget when two incomes become one. There will be a range of new and additional expenses that you may need to cover over the coming months.

The following should give you an idea of the extra money you'll spend to during the process of separating and getting a divorce. We can provide estimates of your legal fees and you should ask your other advisers for a summary of their fees as soon as possible so that you can manage your budget on the way through.

- Legal Fees
- Spousal Maintenance
- Child Support
- Rent/Mortgage
- Payments for a new car
- Moving Expenses
- Furniture or Appliances
- Financial Adviser Fees
- Accounting Fees
- Expenses you'll need for children

TIP: You might be able to write off
some of your divorce settlement fees at lax time.

Ask your lawyer or mediator to provide you
with an itemized list of services performed and
attach it to your tax documents.

#### >> BANK ACCOUNTS

It can be a good idea to withdraw 50% of any funds sitting in joint bank accounts and transfer the money to an account in your own name.

#### >> JOINT LOANS

Notify the lender of the separation and of the arrangements for paying the loan. Arrange for statements to be sent to you at your new address. If your home loan has a redraw facility or linked credit card account, ask the bank to stop these facilities. File a copy of your letter to the bank in your divorce documents file.

#### >> CREDIT CARDS

If you cannot pay the account in full, write to the lender informing them of the separation and ask that no further credit be given on the account. If your ex partner has a second card on your credit card account, cancel the secondary card.

#### >> RENT AND BOND

If you are moving out of rented premises you will need to negotiate with the landlord to be released from the rental agreement. Otherwise you could still be liable for rent after you leave. You may also have to apply to get your bond returned, or transferred.

REMEMBER: Keep copies of all letters, emails and documents. Keep your lawyer informed as to any changes in your financial position. If you are having problems with debts or dealing with lenders ask your financial adviser for assistance.



#### >> BE PREPARED FOR DISCLOSURE

Both you and your ex will be bound by a duty of disclosure which requires all parties to a family law dispute to provide to the other party all information relevant to an issue in the case. This includes copies of both paper documents and electronic documents like those stored on your computer. It also includes documents that the other party may not know about. This obligation starts with the pre-action procedure before the case starts and continues until the case is finalized.

As a party, you must continue to provide disclosure as circumstances change or more documents are created or come into your possession, power or control.

Full and frank disclosure in financial cases requires disclosing all sources of earnings, interest, income, property (vested or contingent interests) and other financial resources. This applies whether the property, financial resources and earnings are owned by or come to the party directly, or go to some other person or beneficiary (for example, the party's child or de facto partner) or are held in corporations, trusts, company or other such structures.

You and your spouse must also disclose information about any property disposal (whether by sale, transfer, assignment or gift) that was made in the year immediately before the separation or since the final separation and that may affect, defeat or deplete a claim.

Full and frank disclosure in parenting cases requires parties to provide all information relevant to a parenting case, at all stages in a case, which may include medical reports about a child or parent, school reports, letters and drawings by the child, photographs or diaries.

Either party who has obtained an expert's report for a parenting case is required to give a copy of the report to the other parties and the independent children's lawyer (if appointed).

Whilst full and frank disclosure can feel onerous at times, you receive the benefit of having the opportunity to obtain any information (within the guidelines) from your ex that you feel may be relevant or important in settling your divorce. Keep notes on the following pages of anything that needs to be obtained or any questions that arise as the process moves forward.

#### **PROPERTY: NEXT STEPS**



#### >> UTILITIES

If paying the bills has fallen to one party in your relationship, you may need to share company details for each service, payment details and login information. Keep a thorough record of your regular bills, payment dates, scheduled payments and who has paid for what since separation.

ELECTRICITY
GAS
GAS
WATER
INTERNET
TV SUBSCRIPTIONS
GARBAGE REMOVAL
CLEANING
GARDENING
PEST CONTROL
201110222
PLUMBER
ELECTRICIAN
HANDYMAN
CECUDITY .
SECURITY
OTHER
OTHER
OTHER
OTHER

#### >> MANAGING PASSWORDS AND SHARED ACCOUNTS

Keep control of the access to your digital world by resetting the passwords on devices and accounts.

#### **HARDWARE**

- Mobile phone
- Computer
- Tablet
- Home Alarm System
- Other .....
- Other

#### **PASSWORDS**

#### If you use a password manager:

- Remove permissions
- Change passwords
- Update emergency contact details

#### If you don't use a password manager:

For those keeping track of their digital world the old fashioned way - like in a Word document or on a piece of paper - here's an overview of the types of accounts where you might need to go in and manually change your passwords:

- Email
- Social media
- Shopping accounts
- Cloud storage
- Software subscriptions
- Entertainment streaming accounts:

movie/TV

music

gaming

- Web hosting
- Messaging/communication tools
- Travel/ticketing/Frequent Flyer programs
- Food delivery services
- Payment services such as Paypal etc.

#### **ACCOUNTS CONTAINING FINANCIAL ASSETS**

Any digital property with funds need to be disclosed as part of the divorce proceedings. This includes:

- Investment site from financial institution
- Online banking
- Revenue generating business ventures (youtube etc)

#### >> LEGAL DOCUMENTS

Your ex-spouse's name may appear on crucial legal documents that should be changed prior to settlement, so make sure you update them.

Advanced Care Directive
(Living Will &
Health Care Proxy)

Last Will and Testament

Property Ownership
Documents

Power of Attorney

Trusts

Superannuation
Beneficiaries

If you haven't created these documents yet, begin the process with your financial adviser to start your new life off in an organized fashion.



#### >> SHARED INSURANCE POLICIES

Time to untangle and reassemble all the insurance policies you shared with your ex. This can get complicated so always ask for help from your financial adviser or insurance agent.

#### LIFE INSURANCE

Get in touch with a life insurance agent or company to discuss the following options:

I have life insurance and need to leave my ex-spouse as a beneficiary to account for child support or maintenance payments if something happens to me.

I don't have life insurance but need to purchase a policy as part of a settlement to account for child support or spousal support payments.

I have a policy and no legal obligation to pay my ex as part of the divorce agreement

#### **CAR INSURANCE**

- Who will be keeping the insurance and who will be removed?
- If you're being removed: you need to purchase a new policy before being removed
- If you're keeping the insurance, transfer the premium payments to one of your accounts and remove your ex-spouse from the car registration.

#### **HEALTH INSURANCE AND MEDICARE**

- If need be contact your health insurance fund to discuss options for a new policy or separate policy to your spouse.
- Make sure any children are covered on your new policy or
- Ensure you have details of the healthcare policy under which your children are covered.
- Contact Medicare with any new address and for a new card if needed. Ensure any rebates are directed to your own bank account.

#### **PROPERTY & CONTENTS INSURANCE**

If you are staying in the marital home:

Make sure the policy is in your name and any insured items of your ex-spouse are removed from the policy

Make sure premium payments are associated with your bank account or credit card

#### If you are moving out of the marital home:

Insure your new home and contents as soon as possible Make sure your name is removed from any other policy sure premium payments are associated with your bank account or credit card



This information is important in helping you understand all of the things which are considered and addressed as part of your property settlement, but it can seem overwhelming and complex. Be assured we are here to guide you through the technical aspects of your settlement and will help you to make informed decisions around all of these issues.

### EVALUATING A BUSINESS DURING A DIVORCE

If your spouse owns a business, the value of the business forms part of the asset pool. But how much is the business worth?

A business is more than just the value of its equipment and furniture. Its name, vendor lists, proprietary sales methods, and accounts payable all possess value that you are entitled to. That's why it is important to do your homework and make sure you get an honest and accurate valuation for your spouse's company.

#### How to Evaluate Your Spouse's Company

In order to obtain an accurate valuation of the business in question, you'll need to factor in things like the company's:

- Financial position
- Brand recognition and value
- Assets and liabilities
- Current contracts
- Patents, copyrights, other proprietary information
- Real estate and building
- Equipment
- Imminent or potential market forces that may increase or decrease the value of the business.

Smaller businesses are usually easier to value. In some cases, especially if you and your ex are able to maintain a good working relationship, it might be in your best interest to co-operate to establish the value of the business and determine the split yourselves. When the value of the business is modest, obtaining an expert valuation or trying to take your ex to court could eliminate any financial gains you hope to make.

#### Should You Hire an Expert?

Looking in from the outside, it can be impossible for you to accurately evaluate the true worth of a medium or large business. In this case, you should definitely consider hiring

an expert, such as a:

- Forensic Accountant
- Certified Business Appraiser

Your financial adviser will be able to recommend the right professional for the job and they will assist you with structuring a suitable, tax effective ownership solution moving forward.

#### TAXES AND STAMP DUTY

Your property settlement can be significantly affected by tax and stamp duty consequences. Understanding which taxes and duties may apply is important when negotiating your property settlement so it can be crafted in a way which maximizes the practical outcomes for the parties and minimizes taxation consequences. Both your lawyer and your financial adviser can help you through these complexities.

A property settlement under the Family Law Act can require separating couples to adjust their property interests by transfers of real or other property. Different types of property attract different types of taxes and duties upon transfer. Here are two different examples:

#### Transfers of property from private companies

When one or both of the parties to a property settlement has control of or involvement with a private company, as part of the property settlement a court can order that the private company transfer either funds or property to a party that is shareholder of the company or an associate of a shareholder.

In recent years the ATO has determined that cash payments or transfers of property from a private company to an individual in family law proceedings will be treated as the payment of dividends from that company. The practical effect of this ruling is that any transfer from a private company will form part of the recipient's assessable income for tax purposes as a deemed dividend. Tax on deemed

dividends can significantly reduce the money that a party is left with following a property settlement. It is particularly important that this potential liability is considered in advance of the property settlement, as it will normally not be incurred by the recipient until lodgment of their tax return at the end of the financial year. With the appropriate advice and planning, other transactions or settlement structures may be used to effect division of funds or assets to minimize or defer such a liability.

#### Property settlements and stamp duty exemptions

A stamp duty exemption applies post separation to a transfer or sale of matrimonial property if the property is transferred or to one of the parties to the marriage (s.68, Duties Act 1997 (NSW)). A similar exemption also applies where there is a breakdown of a defacto or domestic relationship (s.68(1A) and (2) Duties Act (NSW)).

The exemption to apply the transfer or agreement must be drafted in accordance with a binding financial agreement or an order of a Court made under the Family Law Act.

A stamp duty exemption also applies to applications to transfer registration of a motor vehicle where:

the vehicle was registered in the name/names of the party/ parties to a marriage; and the vehicle was matrimonial property; and

the transfer was pursuant to a binding financial agreement or an order of a Court; and

the Chief Commissioner is satisfied that the transfer has been made for the purpose of dividing matrimonial property as a consequence of the dissolution, annulment or breakdown of the marriage (s.267(6) Duties Act (NSW)).

The exemption from the payment of stamp duty could save parties tens of thousands of dollars. For example, the amount of stamp duty payable on a \$500,000 property is (at the time of writing) \$17,900.

#### **SUPERANNUATION**

Essentially, super is considered property in the event of a relationship breakdown, so like any other asset it can be divided between parties by agreement or court order. The rules do not apply to defacto couples in Western Australia.

There are three options when deciding what happens to your superannuation benefits at the time of a divorce or separation:

#### 1. Split the super.

This is the most common approach. Splitting super does not convert it into cash. It is still subject to superannuation preservation laws and must remain in superannuation until you satisfy a condition of release, such as by reaching your preservation age.

### 2. Defer your decision until another time, such as retirement.

A couple can choose to wait for an event (such as retirement) to occur before dealing with the super account by making a flagging agreement, which prevents the super fund from making a payment out of the superannuation account until the flag is lifted. This approach is not often used, but might be appropriate if you or your ex-spouse are in a defined benefit account, where it is more difficult to determine the value of the superannuation. You may also ask for a payment flag to be placed on you and your exspouse's accounts, particularly if one of you is approaching preservation age, to prevent any withdrawals being made before matters are settled.

#### 3. Take super into account but leave untouched.

A couple may choose to divide their other assets while considering the value of their super accounts but can decide to leave their superannuation benefits as they are. De facto couples in Western Australia may choose to take this approach, as their super cannot be split.

#### Fees

Super funds may charge fees for the administrative costs associated with actioning requests, such as:

- a payment split
- a payment flag
- flag lifting
- an order terminating a payment flag, or
- an application for information.

#### What happens to a self-managed super fund?

If you run a self-managed super fund (SMSF) and you're separating from your spouse, then your situation is more complicated, especially if your ex-spouse is also a trustee of the SMSF. The breakdown of your relationship does not absolve you from your responsibilities as a trustee. Trustees must continue to act in the best interests of all members at all times and must continue to act in accordance with super laws. You cannot exclude another trustee from the decision-making process, ignore requests to redeem assets and roll money over to another regulated complying super fund or take any action not allowed by Superannuation Industry (Supervision) Act 1993 (SISA) or the SMSF's trust feed. The best thing to do is to obtain legal advice.

#### Review your beneficiaries

When your marital circumstances change, it is important that you review your beneficiary nomination for your super. You can usually change your nomination at any time.



## STEP ONE initial separation

Focus on you and your children
first, then put your support
team in place - friends, lawyer, financial
advisor, counsellor

- Secure a place to live.
- Secure arrangements for your children.
- Protect your access to cash and ongoing living expenses.
- Make sure your support network is in place.
  Confide in those who you know will be the
  people you can reply on to support you
  through the process so they can be prepared.
  It can be tough on them too.
- Build a trusted team of professionals to ensure their expertise gets you through your divorce in the best possible shape - lawyer/s, financial adviser, accountant, counsellor, mediator, childcare etc. Brief them as soon as possible so that they can assist you through the first crucial steps of the divorce process.
- Update your emergency contact details which are registered with doctors, the passport office, schools and on your phone.

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## STEP TWO pre-negotiation

Be methodical. Use our checklist to compile the information your lawyer will need. File in one secure place in a logical fashion.

- Gain access to all financial information. (Use our checklist on page 20 to make sure you have everything covered.)
- File copies of documents in a secure place and provide them to your lawyer.
- Analyse financials with your financial adviser and your lawyer who will create a balance sheet of assets and liabilities.
- Consider what you need post-settlement and forecast future needs with your financial adviser.
- Strategize your settlement. Which assets are really important to you? Which assets are you prepared to bargain away if necessary?
- Consider an interim estate plan. What would you like to happen to your estate if something happens between now and settlement?
- What are the needs of your children in relation to time with parents, extended family, healthcare, education, holidays, activities and funding. How will all of this be accommodated?

Things I	need 10	vernember	

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what <sup>/</sup>	/ WHO	WHEN



Property settlements involve a lot of documents. The rules around disclosure in Australia require each party to provide a full set of documents pertaining to their assets and liabilities position. To ensure you and your professional team have quick and easy access to those documents consider setting up a shared filing system or a secure document vault for all the documents you'll need to collect. Try to file the documents as per the categories below.

Marriage certificate

#### INCOME

- List all sources of income
- Last 3 payslips
- Last 3 tax returns

#### **REAL ESTATE**

List the following for each piece of real estate your own together.

- Date real estate was purchased
- Purchase price
- Amount of deposit
- Where the deposit came from
- What the monthly payments are if there is an outstanding loan
- Taxes and insurance paid
- Any current mortgage balances
- Market value of the property
- Contract of sale

#### **VEHICLES**

You will need the following information about any cars, motorcycles, recreational or farming vehicles.

- Year/Make/Model
- Registration papers
- Fair market value
- Balance Owed

#### **BANK ACCOUNTS**

- Name and address of bank
- Type of Account
- BSB / Account number
- Current balance
- Names on the account
- Date the account was opened
- Last 12 months of bank statements

#### **TERM DEPOSITS**

- Amount deposited
- Maturity date
- Location of term deposit
- Interest due
- Last 12 months of bank statements

#### **SHARES, BONDS OR FUNDS**

- Name
- Number
- Purchase price
- Market value
- Last 12 months of dividend statements

#### **BUSINESS INTERESTS**

- ACN number
- Name of the business
- Registered Address
- Directors
- Secretary
- Number of shares issued
- Shareholders
- No. of shares in your name
- No. of shares in your spouse's name
- Date business started/acquired
- Structure of the business (public, Pty Ltd, partnership, sole trader)
- Number of employees
- Net worth of business
- Financial accounts for past 3 years
- Tax returns for past 3 years

#### **TRUSTS**

- Name of Trust
- Established by Deed
- Name of Settlor
- Name of Trustee
- Name of Appointor
- Beneficiaries
- Net assets
- Trust Deed
- Last 12 months of bank statements

#### **HOME CONTENTS**

• A list of all items of reasonable value and their estimated value.

#### **COLLECTIBLES AND ANTIQUES**

 A list of all items of reasonable value and their estimated value.

#### **SEPARATE PROPERTY**

If you and your spouse own any property that was brought with you into the marriage, inherited during the marriage, or purchased with money from the sale of other separate property, provide the following information.

- Property description
- When the property was acquired
- How the property was acquired
- What you paid for the property
- Payments made during the duration of the marriage
- Fair market value of the property
- Current amount owed

#### LIFE INSURANCE

- Name of insurance company
- Copy of insurance policies
- Name of person insured
- Value of the policy
- Beneficiaries

#### **EDUCATION**

Were either of you provided an education during your marriage/relationship? If so provide the following information.

- Dates attended school/university
- Annual salary while you or your spouse was pursuing an education
- Annual salary of the other spouse if they worked during this period
- Source and amount of any income by you and your spouse
- HECS debt bill

#### **CHILD SUPPORT & MAINTENANCE**

If you were married before and pay or receive any child support or maintenance provide the following information:

- Monthly amount you received
- How long you have received it
- Whether or not the payments will change after a divorce is final

#### SUPERANNUATION FUNDS

- Name of the fund
- Contributions made to the fund
- Co-contributions made to the fund
- Sum collectible
- Date payments become available
- List of beneficiaries
- Last 12 months of bank statements

#### **OTHER FINANCIAL RESOURCES**

- Discretionary employment benefits
- Unvested shares
- Beneficial interest in trust

#### **CREDITORS**

List all home loans, credit cards and personal loans the following information about each debt.

- Name of creditor
- Amount owed to creditor
- Amount paid monthly
- Who incurred the debt
- Last 12 months of statements

#### >> WHAT TO CONSIDER WHEN DIVIDING YOUR ASSETS

Knowing how the court decides on outcomes in divorce proceedings can provide a guideline for coming to an agreement. Primarily the court's decision would be based on:

- 1. working out what you've got and what you owe, meaning your assets and liabilities (debts) and their value.
- looking at the direct financial contributions by each party to the marriage or de facto relationship such as wage and salary earnings
- 3. looking at indirect financial contributions by each party such as gifts and inheritances from families
- 4. looking at the non-financial contributions to the marriage or de facto relationship such as caring for children and homemaking.
- 5. future requirements a court will take into account things like age, health, financial resources, care of children and ability to earn.
- 6. the needs of any dependent children of the family as first priority. Where this can be afforded and where the children continue to spend time with each parent after separation, the court will want to ensure children have a base with each parent, whether or not the time spent with each parent is equal.

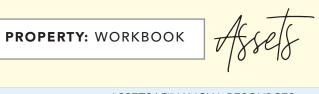
Use our worksheets on the following pages to make note of each of theses elements. It will help build a picture of your total pool of assets and how it might be divided.

#### Some of the other things a court will consider are:

- meeting the needs of both parties, including ensuring their housing and income needs are met.
- if either party has remarried or cohabits with another partner the court may take into account their new partner's income and resources to contribute to the budget of the household.
- the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future from all sources

(employment, bonuses, self-employment, benefits, interest on assets etc.)

- whether or not a party may have had to reduce their hours of work to care for dependent children which may have hampered their earning capacity.
- the standard of living enjoyed by the family before the end of the marriage
- the age of each party and the duration of the marriage.
   Age will affect a party's earnings, mortgage capacity,
   and their ability to achieve independence. It may be
   an important factor when deciding what to do with
   superannuation assets, especially if one or both parties
   are planning to retire soon.
- the length of the marriage or relationship. The longer the marriage the more difficult it may be to achieve independence upon marital breakdown and assets that were pre-matrimonial from one party may acquire matrimonial character.
- in the case of a very short marriage the court may seek to return parties to their financial position pre-marriage and impose a clean break settlement. However, this may not be possible in short marriages with children where the ability of a parent to immediately return to work is hampered by child care needs, or where one party cannot self-support in the immediate term.
- any physical or mental disability of either parties
- the value to each of the parties of any benefit which by reason of the dissolution of the marriage that party will lose any chance of acquiring (This can mean for example the loss of pension rights that a party may have been entitled to upon the death of the other party if they remained married.)
- the conduct of each of the parties. This is a factor that
  is very rarely taken into account in the division of assets.
  It does not include adultery and only applies to the
  most extreme forms of bad behaviour where it would be
  inequitable for the court to disregard it in the settlement
  of the parties' financial position.

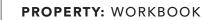


ASSETS   FINANCIAL RESOURCES	YOUR \$	PARTNER \$
Properties		
Bank Accounts		
Bulk/ recounts		
Investments - shares/funds/bonds/		
Vehicles		
Collectibles - art & jewellery, antiques etc		
Home Contents		
nome contents		
Business Interests		

ASSETS   FINANCIAL RESOURCES	YOUR\$	PARTNER \$
Trusts		
Assets held internationally		
,		
Other		
TOTAL VALUE OF PROPERTY		
TOTAL VALUE OF TROFERT		
ADDD A CVC+	111C & \ /A 1 1 I E	
ADDBACKS*	HIS \$ VALUE	HER \$ VALUE
* assets which are disposed of or distributed before final property settlement but after separation whi	ch need to be added back to	property pool.
Funds withdrawn from bank accounts and spent / wastage		
Money or other property such as land given away to friends or family members		
Early sale of asset		
Assets sold for below market price		
Funds gambled or lost in poor investments		
Moneys applied to pay legal costs		
Moneys paid to one party when the distribution to that party was premature		
TOTAL VALUE OF ADDBACKS		
FINANCIAL RESOURCES	YOUR \$ VALUE	PARTNER \$ VALUE
Discretionary employment benefits - bonuses/options/incentives		
Beneficial interests in a trust		
Beneficial interests in an estate		
Loans outstanding to children/relatives		
Other		
TOTAL VALUE OF FINANCIAL RESOURCES		
SUPERANNUATION and SELF MANAGED SUPER FUNDS	YOUR \$ VALUE	PARTNER \$ VALUE
3		
TOTAL VALUE OF SUPERANNUATION		
IOTAL VALUE OF SUFERAININUATION		



LIABILITIES	YOUR \$ VALUE	PARTNER \$ VALUE
Loans - Mortgages		
Loans - Vehicle		
Loans - Personal (or from parents/relatives)		
Credit Cards		
School fees		
Other		
TOTAL LIABILITIES		
SUMMARY	YOUR \$ VALUE	PARTNER \$ VALUE
Total property	\$	\$
Total addbacks	\$	\$
Total liabilities	\$	\$
Total superannuation Total financial resources	\$	\$
TOTAL	\$	\$
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DIRECT FINANCIAL CONTRIBUTIONS	YOUR \$ VALUE	PARTNER \$ VALUE
Salary / Income during marriage/relationship		
Property/assets held before marriage/relationship		
Troperty/assets field before marriage/relationship		
Value of businesses or investments held prior to marriage/relationship		
Dividends from businesses or investments held prior to marriage/relationship		
Payment for education		
Winnings/gambling proceeds		
Other		
Other INDIRECT FINANCIAL CONTRIBUTIONS	YOUR \$ VALUE	PARTNER \$ VALUE
	YOUR \$ VALUE	PARTNER \$ VALUE
INDIRECT FINANCIAL CONTRIBUTIONS	YOUR \$ VALUE	PARTNER \$ VALUE
INDIRECT FINANCIAL CONTRIBUTIONS	YOUR \$ VALUE	PARTNER \$ VALUE
INDIRECT FINANCIAL CONTRIBUTIONS	YOUR \$ VALUE	PARTNER \$ VALUE
INDIRECT FINANCIAL CONTRIBUTIONS	YOUR \$ VALUE	PARTNER \$ VALUE
INDIRECT FINANCIAL CONTRIBUTIONS	YOUR \$ VALUE	PARTNER \$ VALUE
INDIRECT FINANCIAL CONTRIBUTIONS	YOUR \$ VALUE	PARTNER \$ VALUE
INDIRECT FINANCIAL CONTRIBUTIONS  Inheritance	YOUR \$ VALUE	PARTNER \$ VALUE
INDIRECT FINANCIAL CONTRIBUTIONS  Inheritance	YOUR \$ VALUE	PARTNER \$ VALUE
INDIRECT FINANCIAL CONTRIBUTIONS  Inheritance	YOUR \$ VALUE	PARTNER \$ VALUE
INDIRECT FINANCIAL CONTRIBUTIONS  Inheritance	YOUR \$ VALUE	PARTNER \$ VALUE
Inheritance  Inheritance  Gifts received (eg. from spouse's parents or family)	YOUR \$ VALUE	PARTNER \$ VALUE
Inheritance  Inheritance  Gifts received (eg. from spouse's parents or family)		PARTNER \$ VALUE
Inheritance  Gifts received (eg. from spouse's parents or family)  Other		PARTNER \$ VALUE
Inheritance  Gifts received (eg. from spouse's parents or family)  Other  NON-FINANCIAL CONTRIBUTIONS		PARTNER \$ VALUE
Inheritance  Gifts received (eg. from spouse's parents or family)  Other  NON-FINANCIAL CONTRIBUTIONS  Years spent dedicated to care of children		PARTNER \$ VALUE
Inheritance  Gifts received (eg. from spouse's parents or family)  Other  NON-FINANCIAL CONTRIBUTIONS  Years spent dedicated to care of children  Time spent contributing to a spouses business		PARTNER \$ VALUE
Inheritance  Gifts received (eg. from spouse's parents or family)  Other  NON-FINANCIAL CONTRIBUTIONS  Years spent dedicated to care of children  Time spent contributing to a spouses business  Time spent caring for relatives  Domestic duties		PARTNER \$ VALUE
Inheritance  Inheritance  Gifts received (eg. from spouse's parents or family)  Other  NON-FINANCIAL CONTRIBUTIONS  Years spent dedicated to care of children  Time spent contributing to a spouses business  Time spent caring for relatives		PARTNER \$ VALUE
Inheritance  Gifts received (eg. from spouse's parents or family)  Other  NON-FINANCIAL CONTRIBUTIONS  Years spent dedicated to care of children  Time spent contributing to a spouses business  Time spent caring for relatives  Domestic duties  Renovation or property improvements work		PARTNER \$ VALUE



Before you enter a negotiation over your Property Settlement it is vital that you consider your 'Future Needs'.

There are two different aspects to this both of which are important. The first of those is the 'Future Needs' which might be considered by the courts as relevant in the division of your asset pool

#### >> FUTURE NEEDS THAT A COURT MAY CONSIDER

FUTURE NEEDS	YOURS	PARTNERS
Age of Each Party		
Health of each party		
Current income per annum		
Potential income per annum		
Capacity for gainful employment (physical, mental, qualifications)		
Expected retirement age		
Do you have care or control of children under 18. Details of each child. Name/Age		
Commitments of each of the parties that are necessary to enable the party to support themselves, a child or any other person that party has a duty to maintain (for example, a disabled or elderly family member). This may include school fees or home care needs.		
Eligibility of each party for a pension, allowance or government benefit		

Financial advice

#### Now is the right time to speak with a financial adviser.

Professional financial advice, provided immediately after your separation can help you understand the financial impact of the decisions you will have to make both during and after your property settlement – it is a crucial step in deciding how best to secure your financial future.

#### A financial adviser can:

- provide assistance in gaining access to and understanding complex documents and valuations in relation to businesses, real estate, trusts and offshore investments
- help structure your negotiation in the best way for example, it may be more important to secure regular cashflow as opposed to fixed property or to obtain one type of asset over another for tax reasons. It may be advantageous to negotiate for money inside or outside of super depending on your circumstances
- examine what type of housing you will be able to afford or will be most suitable going forward
- help you to protect your income and your family assets
- provide a financial model using a range of possible scenarios to give you a vision of what your short, medium and long term financial position might look like
- forecast how much money you will need to retire comfortably
- create a new strategy for your financial future in line with your values and your goals

### free offer

If you don't have your own financial adviser or if you would like to use the specific services of divorce specialists, Absolute Wealth Advisers will provide you a free 2 hour meeting.

Email: client.service@absolute.sydney to book.

After working with you and your lawyer to understand your financial situation in the first meeting their financial guidance will give you a solid foundation to help you make informed decisions.

Thereafter they can help you build your financial future with a comprehensive financial plan, settlement implementation and an ongoing review process to help your stay on your private wealth pathway.

absolute

www.absolute.sydney





## STEP THREE negotiation

Stay strong and calm. Massage, counselling, meditation, good sleep, a healthy diet and regular exercise will help keep you focused.

- Decide on your settlement process collaboration, mediation or litigation.
- Your legal team will finalise the settlement balance sheet after receipt of disclosure
- If there are outstanding joint loans at the time of a property settlement, consider the following options: Ask your ex-partner to get another loan in his or her own name and pay out the existing joint loan or sell any available property to pay out all joint loans.
- Ideally, a property settlement will end all financial ties between you and your ex partner and all outstanding joint debts will be repaid, or refinanced in the name of one partner only.
- Stick to your minimum requirements during the negotiation.
- Be flexible around things which are not as important to you. It is unlikely that you will receive everything you wanted in your best case scenario. Drawing negotiations out over minor issues and assets can lead to extra costs and extra stress.
- Be at your best. Avoid late nights, alcohol and other toxins.

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## STEP FOUR settlement

Breathe a sigh of relief and set some time aside to tidy up any loose ends.

- Make sure you have a full understanding of, and are comfortable with the guidelines / agreements which have been reached?
- Proceed with formal documentation and signing of your agreements - Court Orders, Binding Financial Agreement, Binding Child Support Agreement, sales, deeds etc.
- Prepare for and execute change of ownership of assets as per the settlement agreement.
- Be aware of all your obligations under the legal settlement documents.
- Tidy up any loose ends which might include changing names, payments details and or passwords on household bills, subscriptions, bank accounts, school information portals etc.

Things I	need	12 vev	hemper	
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WHAT	WHO	WHEN	

## Things I need to vernember



time for a fresh start.
Put a plan in place to optimize
what you have today for
a fabulous future

## STEP FIVE moving forward

- Meet with your financial adviser to explore the values, goals and investment criteria with which you would like to manage your wealth.
- Establish your advisory team going forward accounting, financial and legal.
- Review your insurance needs, your superannuation strategy, your debt facilities and your ownership structures.
- Complete a new estate plan
- Implement investments and wealth plan
- Organize access to regular cash flow
- REWARD YOURSELF! Set some money aside to do something you've always wanted to do...and do it. Start your new life off with a sense of optimism.

PLAN	STEP 01	PRESENCE	Where are you now - financially and emotionally?
	STEP 02	DESIRE	What are your values and purpose? How do you want to feel? Imagine your ideal lifestyle.
	STEP 03	VISUALIZE	Build a pathway to wealth in line with your desires. Set clear goals for the quarter, year, 3 years and 10 years.
DO	STEP 04	SIMPLIFY	Tidy up what you need. Discard what you don't. Set up what you don't have.
	STEP 05	PROTECT	Preserve what you have for those that you love.
	STEP 06	GROW	Grow your wealth with simple, proven, understandable investments
BE	STEP 07	ENJOY	Enjoy financial peace of mind. Allow your security to inspire confidence and new ideas.

	Things to do	/ ghestions I have who	
WHAT		WHO	WHEN



Going through a separation is never easy, particularly when there are children involved. It is not possible for care arrangements to continue as they were when parties were together, and it is often difficult to come to agreement that both parties are happy with, particularly where there is conflict. Sometimes its the case where one parent feels helpless post separation and that they are left with little say in the decision making and care arrangements for the children. While every individual will need legal advice specific to their case we've outlined some of your basic rights below.

#### >> FAMILY LAW — UNDERSTANDING YOUR RIGHTS

#### **Common Misconceptions**

Some common misconceptions in Family Law are that:

- The children will live primarily with their mother;
- The mother is responsible for making all major decisions in respect of the children;
- Parents have a right to 50/50 care of the children.

Whilst every family law matter is different, the underlying principle is that decisions must be made which are in the best interests of the child/children.

#### What Are Your Rights?

The Family Law Act focuses on the rights of children and the responsibility each parent has towards their children. Whilst parents have a right to see their children, the Family Law Act considers that children have a right to have a meaningful relationship with both parents. However, in doing so, they must also be protected from harm.

There is a presumption that parents have a right to "equal and shared responsibility" of the children. This does not mean a 50/50 care arrangement. Rather, that both parents have the right to make major decisions in respect of the children, such as medical decisions and schooling.

In considering whether shared responsibility and significant time with a child is practical, consideration should be given to:

- both parent's living arrangements and distance from each other;
- parent's current and future capacity to facilitate an equal time arrangement;
- parent's current and future capacity to communicate and make decisions together with regard the child; and
- the impact the arrangement would have on the child.

Where it is deemed that an equal and shared care arrangement is not is the child's best interests, or is not reasonably practicable, consideration should be given to an

arrangement whereby you spend substantial and significant time with the child.

This ultimately varies among cases, but it may look like:

- overnight time during the week to ensure you have some involvement in the child's school week, such as an opportunity to assist the child with their homework, attend extra-curricular activities with the child and take the child to and from school:
- weekend time with the child;
- time for special occasions such as birthdays, Christmas and Easter; and
- school holiday time.

#### What You Can Do

In negotiating an arrangement with your former spouse, it is important that you have consideration to your child's needs and what is in their best interests. If you are having difficulty in coming to an agreement, we always recommend attending mediation with a Family Dispute Resolution (FDR) consultant.

An FDR consultant can assist parties with narrowing down the issues in dispute and coming to an arrangement that considers things like:

- who will make day-to-day decisions in respect of the shildren?
- what care arrangements are to be in place during school terms?
- how is time to be shared during school holidays and special occasions?
- what happens if one parent wants to take the children on an overseas holiday?

Where mediation is unsuccessful a 60I certificate will be issued so that proceedings in the Family Court can commence. This is always a last resort due to the significant delays, costs and stress that is involved.

## >> PARENTING ARRANGEMENTS POST SEPARATION

As a matter of principle, we encourage our clients to reach an agreement, if possible, about their parenting arrangements post separation, without the need to resort to the Family Law Courts. One advantage in reaching an agreement is that the legal fees will be significantly reduced, and in our experience, the parties are more likely to have an effective co-parenting relationship moving forward.

Parents who are able to reach an agreement regarding care arrangements for their children have two ways to formalize their agreement. If you and your former partner agree on the future arrangements for your children, you can either make a Parenting Plan or obtain Consent Orders approved by the Court.

#### Parenting Plans

A Parenting Plan is a written agreement that is made between the parents of a child or children which sets out parenting arrangements for each child. The plan is worked out and agreed jointly so the parents do not need to go to Court. However, it should be noted that a Parenting Plan is not a legally enforceable agreement and cannot be enforced like a Court Order can be. Parenting Plans are very useful where parents can cooperate and agree about the care arrangements for the child and the issues they wish to include in the Parenting Plan.

#### **Consent Orders**

Consent Orders are one of the most common ways in which parents record the care arrangements for their children post separation. They can only deal with the care arrangements for children and cannot deal with child support issues. They also deal with the following issues:

- whether the parents are to have equal shared parental responsibility
- with whom the child lives
- whether the child will spend equal time with each parent or "substantial and significant" time with a parent, including specific details of how the child will spend time with each parent the child spending 'special days' with each parent such as Christmas, Easter, birthdays, Father's Day and Mother's Day;
- the time a child will spend with a grandparent or other relative
- the communication a child will have with the parent who they are not living with, including telephone, skype and facetime
- any aspect of the care, welfare and development of the child, including education (the school the child will attend), health, religion and cultural issues

Consent Orders are enforceable by the Court. In these circumstances, if a parent fails to comply with the Orders, it is possible to file a contravention application with the Court.



## >> CO-PARENTING & JOINT CUSTODY

Prepare and agree in writing:

Interim Care and Parenting Agreement

Visitation Schedule

Payment Arrangements

#### >> HEALTH & MEDICAL

Make sure your child's daycare or school has updated contact information for you and your ex-spouse. Pass those details along to their doctor, too.

Share the following information with the co-parent:

- Contacts for all doctors (general practitioner, specialists, therapist)
- Medications
- Food allergies as well as likes/dislikes
- Most recent immunization records from last check-up (for school, camp, or other major activities)
- Noticeable changes in attitude, mood or behaviour

#### >> DAILY/MONTHLY SCHEDULE

For each of the following make sure you have updated contacts for each school, organization, and a contact list of parents of kids who are best friends or involved in any of the activities listed here:

- School
- Camp
- Tutors
- Lessons (music, dance, karate)
- Activities (sports, crafts, play dates)
- Holidays/celebrations (who gets children for which/ major upcoming trips)





## HOW DO PRIVATE CHILD SUPPORT AGREEMENTS WORK?

One of the many challenges couples face when deciding to separate is the ongoing support of their kids. Most parents rightly make this their priority, however sometimes the circumstances can be complicated, and it can be hard deciding on the best option for the whole family.

If the financial arrangements for your children become significantly impacted following a separation (divorce or otherwise), it may be best to enter into a private child support agreement, ensuring expenses will be met and your kids are properly looked after.

It's also important to strike a fair deal and find the best outcome for you and your financial situation.

#### How to divide child expenses upon separation

In Australia, the government's Child Support Registrar uses a formula to determine the standard rate of child support that is payable for a child based on:

- 1. the income of the respective parents; and,
- 2. the number of nights the paying parent spends with the child.

The Department of Human Services provides a useful online calculator that estimates the rate of child support by applying the formula to a particular set of circumstances. The calculator has its limits, however, as there may well be other expenses that a parent pays or contributes towards, such as:

- private school fees;
- private health insurance premiums;
- day/child care; and,
- extra-curricular activities.

These are not automatically credited towards a government assessment, meaning a parent could end up paying well over the assessed amount of child support. If this matches your circumstances, then our recommendation is that the parents enter into a private Child Support Agreement. This is a legal agreement between the two parents that will allow for a greater consideration of the wider circumstances and help to reach the fairest arrangement possible.

#### What is a private Child Support Agreement?

There are actually two types of private Child Support Agreements in Australia, and the differences between them are significant. One is a *Binding Child Support Agreement* and the other is a *Limited Child Support Agreement*.

#### **Binding Child Support Agreement**

The Binding agreement is the stricter of the two, as it remains in place until the child turns 18, unless otherwise stated in the agreement. It can't be terminated early unless a new agreement replaces it, or a Court sets it aside. It's a binding and enforceable contract between the parents that outlines how the two parties will cover the specific costs. These types of agreements are most appropriate for parents who wish to enforce agreements reached on a final basis and where there is capacity for the paying parent to meet the terms of the Agreement.

If you are considering a binding agreement for child support, it's important to keep in mind that the following conditions need to be met in order for it to be valid:

- 1. that the agreement is in writing and signed by both parents;
- that the agreement includes a statement to the effect that each party has received independent legal advice as to the effect and advantages and/or disadvantages of the agreement, before it was signed; and,
- that it includes an annexure, for each of the parties to the agreement, signed by the person who provided the legal advice, which certifies that the advice was provided.

#### Limited Child Support Agreement

The main difference here is that the Agreement can be ended by one of the parents after 3 years, or if their financial circumstances change by more the 15% of the government assessment. Hence the name 'Limited'.

The Limited agreement may be best suited to your circumstances, as provides parents peace of mind if they are unsure of their financial futures and do not want to be tied to a Binding Financial Agreement (which can't be set aside unless by agreement or a Court Order).

The drawback, however, is that this would bring the parents back to the question of how to financially support their children, whereas a binding agreement is set until their adulthood. The Limited Child Support Agreement can only be entered into between parents who already have a government child support assessment in place.

Unlike the Binding Financial Agreement, the Limited Child Support Agreement does not require the parents to obtain independent legal advice which can reduce the costs associated with this type of agreement. We still recommend you seek professional advice from a family lawyer first, as understanding the terms before signing is crucial.



#### the warning signs

Respecting your child's right to have a meaningful and loving relationship with both parents is the most important responsibility you have during and after the divorce process. Unfortunately not all parents are able to put aside their own emotional needs during this time and children can become unwilling victims caught in the crossfire of a high conflict divorce or separation. If this is happening in your family it is important to be able to recognize the warning signs as soon as possible and do whatever you can to minimize the impact of toxic behaviour on both yourself and your children.

- The high conflict parent tends to escalate and exacerbate conflict, rather than resolve it. We often believe that if we can help resolve the issue, the conflict will simmer down. Not so with the high conflict parent. It is not about the issue with this person. He or she is uncompromising and unforgiving of anyone who does not agree with their point of view. Children sense this and are scared to speak their feelings or truth around these parents.
- The high conflict parent has difficulty managing his or her emotional reactions. This is a type of person who doesn't regulate or recover after getting upset. It can take a very long time for them to get past any type of perceived or real slight. People often feel like they are walking on eggshells around them. Sometimes the high conflict parent uses his or her emotional dysfunction to keep people in line, including children. The kids don't want to 'upset' this parent for fear of the consequences It's a form of emotional control and intimidation.
- The high conflict parent has a need to externalize all responsibility and the ex-spouse is a handy target. This parent believes that nothing he or she does is a part of the issue. All problems are attributed to other people, including the children. He or she refuses to entertain the idea that they may be playing a part. It is ineffective to ask this parent to change his or her behaviour.
- The high conflict parent does not seem to have real compassion or empathy for others. Sometimes, he or she pretends to feel for others, but it is a cover up. This is often camouflaged during the marriage, usually until a crisis point. These parents are often self-absorbed and unable to acknowledge other people's pain. This applies to the children as well. Professionals can educate these parents about what's best for the children, but they make decisions that are self-serving in the end.
- The high conflict parent indulges in vindictiveness which
  is probably the most damaging. He or she takes pleasure in striking back at the ex, whom they perceive as
  having caused them hurt. There is no regard for how this
  may affect the children. This parent will also strike out at
  the children, if he or she feels rejected by them.

 A high conflict parent will often quote 'the needs of the children' to control their ex-partner and sabotage their parenting. They may something like "Billy needs to be home all weekend as he is tired and has exams next week", when they know in fact that you have organized activities over the weekend and they will feel powerful if they prevent you from undertaking your own family activities.



#### **PARENTING**



#### High Conflict Parents cont.

The worst-case scenario for any parent and child during and after the divorce their relationship is broken down by a vengeful or emotionally unstable parent. Some spouses will deliberately sabotage the other parent's relationship with a child and manipulate the child to reject a previously loved parent as means of revenge for the hurt they have experienced.

It is critical that you alert your lawyer at the very first sign of this happening so that they can help put measures in place to protect you and your children. Once this dynamic takes hold it can be extremely difficult unravel – even if the courts rule in your favour. In some cases this leads to situations where parents have no contact at all with their children.

The long-term outcomes for children when this happens are devastating.

#### They can suffer from:

- disrupted social-emotional development
- insecure attachment style
- obsessive-compulsive tendencies
- low self-esteem
- anger and resentment
- grief
- depression and anxiety
- sleep difficulties
- substance related problems
- suicide
- family violence and abuse
- trauma related disorder
- persistent complex bereavement

Below are some of the red flags, as outlined by *The Eeny Meeny Miney Mo Foundation*, that you may be being alienated from your children. The other parent:

makes denigrating and negative comments about you to the children or in their company.

accuses you of not being capable of caring for the child.

accuses you of being dangerous or abusing your child without adequate supporting evidence.

makes sinister interpretations of normal events (e.g., the child sitting on the father's lap)

uses the child's reluctance to see you as 'evidence' of your wrongdoing.

puts endless obstacles in the way of the child spending time with you and your extended family

insists on repeatedly contacting the child while the child is with you.

fails to produce the child so the child can spend time with you.

fails to pass on gifts, cards or letters to the child from you.

makes it difficult or impossible for you to maintain contact with the child by telephone or other electronic means.

fails to inform you about the child's medical counsellor or psychologist appointments or limits the information that is provided to professionals working with the child (e.g., counsellors, psychologists).

interrogates your child when they return from spending time with you

tells the child you have a new family and do not want them any more

discloses negative information about you to the child as a means of strengthening the alliance between them and the child

tells the child they do not have to obey you or your new partner and makes your rules for the child seem unreasonable

pressures the child to take their side in the conflict between the parents.

makes it clear to the child that positive feelings about both parents will not be tolerated.

actively encourages the child to be solely dependent on them

encourages the child to lie to support their point of view

emotionally manipulates the child by withdrawing or love and affection if the child disagrees with their view about you or asks to see you.

informs the child's school of the threat you represent to the child despite no evidence to support this threat existing.

seeks out sexual assault support or family violence support for the child despite no evidence that you sexually abused the child or perpetrated family violence.



# How to Respond to a toxic co-parent

If you suspect your ex is a high-conflict parent, or if they have engaged in any of the red flag behaviour we have outlined, it is likely your divorce negotiations and co-parenting are going to be difficult. Here's what can you do.

- Do not engage the high conflict parent in conflict which may sound almost impossible. You will absolutely not agree with all that this parent offers as "solutions". In fact, some high conflict parents will put out unworthy solutions just so that you appear to be uncooperative when you reject their ideas. You can reject ideas, offer alternative solutions, but do it – ideally – without engaging in conflict.
- Maintain a professional approach with the high conflict parent. His or her goal will be, to incite rage in you. You will be pushed to the limit on many occasions. Do not give in, give them attitude, ignore, or call them any names, even if it's deserved. The minute you retaliate it will be used against you.
- Do not believe, or give in to, psychological manipulation if the high conflict parent is telling you and your children that you are not a good parent. Hold your ground. Behave beyond reproach and keep your lawyer informed so that they can fight for your right to see and love your children.
- Empathize with your children if they are on the receiving end of the high conflict parent's craziness. It's best to avoid joining with them in their misery. "I know, he or she did something to me also ..." is not soothing to them. Their sharing with you should be about them. They need you to be the parent who is grounded, safe and listening. You can share your own emotions with a trusted friend, therapist, or family member.
- Maintain boundaries with the high conflict parent.
   Do not give in on a limit that you have set with him or

- her. You may be reasonable, compromising, flexible in all other areas of your life. Do not think that being reasonable and flexible with the high conflict parent will earn you any reciprocity. This type of parent is not a prosocial kind of person. Stop expecting that to change.
- Insist on an extremely specific and detailed parenting plan. Specify exact times, locations and days for change overs and holidays. Specify the only events in which the other parent needs to be contacted and specify how they should be contacted. Specify what the child needs to bring with them to each home. The more detailed the better. Do not leave anything open to interpretation as it is likely to become a source of conflict.
- Consider using a parenting app like Our Family Wizard or CoParently and stick to that as the only source of information and communication you share.
- Keep thorough records of all interactions and events in case they are needed in court. If possible limit communication to email. Keep them all and back them up. Keep texts and make notes about dates, times and locations of incidents where the other parent is interfering in your relationship with your child.
- Get connected to a good therapist. You are going to need support and strategizing to maintain boundaries with the high conflict parent.
- Accept that life is not going to be smooth sailing if your ex is a high conflict parent. However, you can be instrumental in calming the tornadoes that this parent can create.





"Freeing yourself was one thing, claiming ownership of that freed self was another."

— Toni Morrison