



# Financial Rights

LEGAL CENTRE

FACT SHEET



Financial Rights Legal Centre Inc.  
ABN 40 506 635 273

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## FAMILY BREAKDOWN & DEBT

This fact sheet is for information only. It is recommended that you get legal advice about your situation.

### CASE STUDY

Joni was separated from her husband, Jim. Before the separation Jim's business had been going badly and he had started gambling using poker machines. Joni and her two children still lived in the family home and she had not had any contact from Jim for many years apart from the odd birthday card for the children.

For the first few years after the separation Joni had struggled to keep up the loan repayments for the house, but now things were a bit easier. Joni had never worried about getting a property settlement to finalise things between them. Now Joni has received a letter saying that Jim is bankrupt and that his share of the house will have to be used to pay all of his debts.

The end of a relationship often leads to financial hardship, especially if you are supporting children with little or no help from your ex-partner or you have joint debts which your partner is unwilling or unable to help you pay.

You are not responsible for your partner's debts just because of your relationship, whether you are married or not. However, you may have become liable for his or her debts because you signed a loan contract as a joint borrower or guarantor, or because you were a director of a family company or a partner in a business.

In most cases you will not be able to get out of loan contracts you have made in the past, but you should get legal advice about this. There are a number of services which may be able to assist you. The box below contains a checklist of steps you may want to take to stop your financial situation from getting any worse.

### TO PROTECT YOUR FINANCIAL POSITION WHEN YOU SEPARATE THINK ABOUT:

#### BANK ACCOUNTS

Close any joint accounts. You may want to give some of the money from the closed joint accounts to your ex partner, or use the money to pay joint debts.

[www.financialrights.org.au](http://www.financialrights.org.au)



## HOME AND OTHER 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, write and ask the bank to stop these facilities. Keep a copy of your letter to the bank.

## CREDIT CARDS

If you have a joint credit card account close the account if you are able to pay what is owed. 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.

## UTILITY BILLS

Transfer or disconnect telephone, electricity, gas and water if the accounts are in your name and you are moving out.

## 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.

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**REMEMBER:** Keep copies of letters and documents and get advice – Get legal advice about your children, any family business and property settlements. If you are having problems with debts or dealing with lenders, see a financial counsellor.

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## PROPERTY SETTLEMENTS

A property settlement is an agreement registered in a court between a couple who have separated or divorced about how their property should be divided between them. If a couple cannot come to an agreement, a court has the power to make orders about how property should be divided.

Property settlements or court orders can be made between couples who were married or couples who were in a de facto or same sex relationship. Although a court does have power to divide property, it does not have the power to divide debts or change your contract with a lender (whether you are the borrower, or guarantor of a loan).



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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.
- 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.

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**IMPORTANT:** If you are the director of a company or you have signed a contract of guarantee, get legal advice. If you are getting legal advice about a property settlement, tell your legal advisor about all loans, contracts of guarantee and family business arrangements.

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## NEED SOME MORE HELP?

See [Fact Sheet: Getting Help](#) for a list of additional resources.

*Last Updated:* February 2014