



**What you need
to know about
property settlement
when you separate.**

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Welcome to Divide



Hi, I'm Belinda. I head up the team at Divide.

We are specialised Chartered Accountants helping ex-couples throughout Australia with solution-driven advice, tailored to your property settlement.

Our mission is to find the very best and most cost effective outcome for both parties in a non-aggressive space.

Alongside this, Divide provides practical and tailored support specific to both parties' requirements based on incomes, borrowing abilities, available Centrelink benefits, superannuation and tax planning.

In this free ebook, we share some general advice for your property settlement. For more in depth, personalised support please book a free chat through our website.

Belinda

**AND THEY LIVED
HAPPILY EVER AFTER
BUT SEPARATELY.**

Tricks for a successful property settlement.



Tricks for a successful property settlement.



If you are about to begin your property settlement following separation or divorce, you can be forgiven for wondering where to start.

Depending how long you have been together with your now ex-partner and the number/type of assets you own between you, it could be a daunting process. It can also be fraught with tension and emotion which has a terrible habit of shifting your focus.

Getting professional support is highly recommended.

The question: Who do you turn to for help with your property settlement in the knowledge that you are in the best hands for the best outcome?

For many, this is no-brainer ... a lawyer, of course. There are some separations, especially those involving complex matters, child custody or domestic violence, that do require legal advice and/or support.

However, if you need professional assistance with your financials when you break-up, a smarter choice is to use a specialist separation accountant. In fact, many lawyers will look to an accountant for advice if they have been assigned a complicated financial split.

So why not cut out the middleman (or woman)?

Instead, use a specialist separation accountant who will work with both you and your ex-partner to find the absolute best way out of your joint financial obligations by providing solution-driven advice, tailored to your financial separation. They can even assist you to get consent orders signed-off by the federal and family court without you stepping foot inside a lawyer's office or court house.

In short, a specialist separation accountant will keep your financial separation on track and allow you to make educated decisions based on targeted advice for a shorter, more amicable and less expensive separation.

To dig deeper into this topic here are some tricks for a successful property settlement.

COMPLETE UNDERSTANDING OF A CLIENT'S FINANCIAL POSITION

A separation accountant will work to understand each of the clients' financial positions. This includes all the assets and liabilities that make up the asset pool, including superannuation.

They can then outline specific financial matters for clients to consider possible options and outcomes for their particular situation. Arming ex-couples with as much knowledge as possible as well as realistic results empowers them to make confident decisions for the good of their whole family.

Property settlements are too important and personal to use a "one size fits" all scenario.

THINK FORWARD IN RELATION TO ASSETS AND LIABILITIES

Although many separating couples are desperate to split and move on, thinking forward is a huge part of ensuring the financial split is just and equitable.

To do this, a separation accountant will offer practical advice along-side step-by-step action plan support in relation to what to do with each asset and liability.

Here are some examples:

- Where couples have no children at home and propose one buying the other out of the house, a separation accountant will ask them to consider if this house still meets their needs. This is because if they plan to down-size they are best to sell the home now to determine what the exact value is, rather than working on estimated values and then have one party sell later. Only use estimates if a person is to keep a property. Otherwise, it is best to deal with actual costs to prevent an estimation benefiting one person and disadvantaging the other.
- When house and super are the only assets, and the house needs to be sold to split assets, a separation accountant will work with a couple if they want their children to stay in the family home for a few years. They can assist you to structure a settlement that has the home being sold in the future and a formula in place for how much the other party is to be paid. This would include who pays the mortgage and house expenses in the interim.

- When one person has a higher income and borrowing capacity, a separation accountant will work with both parties to enable the party with a lesser income and borrowing capacity to get more of the cash, if both parties wish to purchase a home and they both agree, then the property settlement can be structured so the higher income earner gets more superannuation and / or other less liquid assets.

WORK THROUGH BORROWING CAPACITIES

For many couples going through a separation, the ideal scenario is for them to each be able to borrow and purchase their own property in their own names.

A specialist separation accountant will encourage clients to determine their borrowing capacities with banks and/or mortgage brokers.

This information will then be used to decide how to allocate cash and super between the parties for the desired outcome of purchasing a home each.

EXPLORE OPTIONS TO FUND THE KIDS

Moving forward as a separated couple with children comes with some unexpected expenses. These, if not accounted for during a property settlement, may cause conflict and tension in your co-parenting relationship.

Costs may include items such as:

- Private school fees
- Expensive extracurricular activities
- Orthodontist fees
- School trip expenses
- Vehicles (when your children start to drive)

Exploring these options and agreeing on how to fund children's costs at the time of financial transition will smooth the path moving forward and prevent financial conflict upsetting a carefully balanced co-parenting relationship.

SEPARATING WITH A FAMILY BUSINESS

For ex-couples who own a business together, the financial settlement will be further convoluted and definitely worthy of an accountant's view.



Considerations will include a transparent understanding of the business structure, as well as how to value the business and its positioning in a property split.

TAX IMPLICATIONS IN A PROPERTY SPLIT

Separation can lead to some unplanned and significant tax consequences. Irrespective of your financial situation it is important that potential tax implications are considered to ensure the split of assets and liabilities is consistent with the split you have agreed.

If assets are to be transferred and account for future tax payable, a specialist separation accountant will ensure that one person does not inherit liabilities which have not been accounted for.

At Divide, no matter how simple or complex your family financial structure is, we can assist you to work through the tax implications of your separation.

SUPERANNUATION AND SEPARATION

Superannuation (“Super”) can be confusing at the best of times and it is often a big component and sometimes a bone of contention in a property settlement.

If self-managed super funds are to be split or wound-up, we will give you options as to how the assets in these funds can be treated so that member balances can be converted to cash. Or we will work with clients to wind up self-managed super funds and roll out member balances into retail funds.

Understanding exactly how super fits into your separation in a way that is beneficial to both parties, now and in the future, can significantly change the outcome for the better. It also gives you and your ex-partner the knowledge to make educated decisions that sit comfortably with you both.

See more about super and separation in the next chapter.



**NOT ALL STORMS COME
TO DISRUPT YOUR LIFE,
SOME COME TO
CLEAR YOUR PATH.**

Superannuation after separation. How it works.



Superannuation after separation.

How it works.

Superannuation ("Super") is an area that many of us find confusing and don't fully understand. We know we have it and it is good to have, but the specifics of when we can access it and what we can do with it are on our "to do" list - "understand my super".

This approach to your super works fine, unless and until your relationship breaks down - as superannuation ("super") is an asset that needs to be considered in a property settlement.

The following five points will help you understand how your superannuation works after separation:

1. SUPER CAN BE SPLIT

Each of your super balances are assets that need to be taken into account when detailing the assets and liabilities of your relationship. Super, like other assets you own, can be split between you and your partner in your property settlement, if you wish.



2. SUPER NEEDS TO STAY IN SUPER

While super can be transferred between you and your partner, as part of your property settlement, it still needs to remain invested in super. Splitting and transferring super from one partner to another, means the super balance of the transferring partner is reduced and the super balance of the receiving partner is increased - it does not mean that the transferring partner can pay the super to the receiving partner as cash. Splitting super does not change the asset from super into cash.

3. WHEN CAN SUPER BE ACCESSED?

You can access your super when you satisfy one of the following, called conditions of release

- You reach your preservation age and retire (your preservation age - being 55 to 60 - based on your date of birth)
- You reach your preservation age and choose to start a transition to retirement income stream while you are still working
- You turn 65 (even if you have not retired)

4. EARLY ACCESS TO SUPER

You can access your super early in some special circumstances. The more common special circumstances are:

- Compassionate grounds
- Severe financial hardship

5. HOW ARE SUPER WITHDRAWALS TAXED?

The tax that you will pay on any super payment is based on:

- Your age when you receive the payment
- Whether the money in your super account is tax-free or taxable
- Whether you get the payment as a lump sum or income stream

Make sure you contact your super fund before requesting a payment, so you understand the tax implications - as with planning, you can achieve your goal of receiving your superannuation payment tax free.

For further support to manage your super during your financial settlement book a free chat through our website.

**WHAT FEELS LIKE THE
END IS OFTEN A NEW
BEGINNING.**

Tax consequences of divorce.



Tax consequences of divorce.

HOW DOES DIVORCE AFFECT TAXES?

Separation can lead to some unplanned and significant tax consequences.

Irrespective of your financial situation it is important that potential tax implications are considered to ensure the split of assets and liabilities is consistent with the split you have agreed.

Separating couples can broadly be categorised into two groups:

- Typical financial structures (most of us)
- More complex financial structures

Typical financial structures usually involve the couples themselves and no other trusts, partnerships or companies. These couples typically have:

- Savings
- A house with a mortgage, or are renting
- Superannuation, either one or both

- Cars, either owned or with loans
- Household items
- Credit card debt and/or personal loans

CAPITAL GAINS TAX DIVORCE

For these separating couples the tax consequences are generally relatively simple. For example, if one party remains in the house and buys the other out of the house, there will be capital gains tax rollover relief (no capital gains tax to pay) for the transfer of the leaving party's share of the property, and there will also be no stamp duty on transfer.

If superannuation is to be transferred between the parties, there are no tax consequences of this action.

If a car is to be transferred from one party to another as a result of separation, this transfer is exempt from stamp duty.

Household and personal items can be transferred from one party to another, without the fear of any unintended tax consequences.

OTHER DIVORCE TAX IMPLICATIONS

So for most of us, the tax implications of divorce are fairly minimal. To obtain these roll over concessions though, your financial settlement must be documented in consent orders, which are lodged and accepted by the Family Court.

Despite the appearance of things being fairly straight forward for separating couples with typical financial structures, it is important that you continue to consider the tax consequences of every main decision you make after separation.

For example, if the separating couple owned their family home jointly, and one party moved out and bought another property to live in, the party who relocates can only have one property as their principal place of residence ("PPR") for capital gains tax purposes. If the relocating party chooses their new residence as their PPR then capital gains tax may be payable on their share of the original family home from which they relocated.

Separating couples who have more complex financial arrangements tend to be involved in one or more partnerships, companies and trusts (including family trusts).



If you are in this situation, it is critical that you obtain advice from a properly qualified tax accountant or specialised separation accountant to ensure you are fully aware of the potential tax implications of any asset split you are considering.

Such advice will enable you to make informed choices, and ensure that costs that will result from your proposed asset split (tax, stamp duty and professional) have been factored into the net value of the assets of the relationship.



TAX EXEMPTIONS DURING DIVORCE

There are many exemptions from capital gains tax and stamp duty when it comes to separation, however, there are many scenarios where these exemptions do not apply.

It is important to identify and quantify the tax liabilities and consider alternative options. If tax liabilities will arise they can be taken into account when the assets and liabilities are split. To do this you need to know who will incur the liability and how much it will be.

Where companies and trusts exist, it is common for one party to remain with the structure and the other party to depart. It is quite usual for the departing party to insist on an indemnity from all future liabilities as part of the settlement arrangement.

This way, the departing party can have comfort that they will not be responsible for any future liabilities that are incurred or arise, after they depart the structure.

Sometimes people obtain assets as part of a financial settlement that are owned by another entity, for example a car owned by a related company. It is important to obtain proper advice to determine the tax implications of such a transfer.

At Divide, whether your situation is relatively simple or more complex, we can assist you to consider the tax implications for your separation.

**PEACE IS NOT THE
ABSENCE OF
CONFLICT. IT IS THE
ABILITY TO HANDLE
CONFLICT BY
PEACEFUL MEANS.**

The difference between divorce and property settlement.



The difference between divorce and property settlement.

What is the difference between divorce and property Settlement?

Divorce and Financial/Property Settlement are two different and separate Family Law matters, but they are commonly confused as one single matter.

Financial/Property settlement (how your property is divided) can happen at any time from the date of separation until one year after a divorce for married couples or two years from the date of separation for de facto couples.

A Consent Order is an agreement between the parties that is approved by the court and then becomes a court order. This can be a Property Settlement Consent order and/or a Parenting Consent order.

Divorce can be applied for after 12 months of separation. Children and property issues do not need to be finalised at the time a divorce application is made.



Once your divorce becomes final, you and your ex have a time limit of 12 months to apply for a property settlement. It is therefore advisable, if possible, to finalise your property settlement before applying for a divorce, as you are not impacted by any time limits.

FINANCIAL/PROPERTY SETTLEMENT

Financial Settlement (also referred to as a Property Settlement) is the division of the couple's combined Net Assets (Net Assets are Total Assets such as real estate, cars etc less liabilities such as mortgages, loans, credit card debts etc).

There is no set formula used to divide your property. No one can tell you exactly how a court would decide on your property settlement, as the court will decide what they believe is just and equitable based on the individual circumstances of your family. However, the Family Law Act 1975 sets out the general principles the court considers when deciding financial disputes after the breakdown of a marriage or relationship.

Financial Settlement involves four main steps:



1. Identify and value the Net Assets (what you own less what you owe)
2. Consider the contributions of both parties, both financial (eg, wages) and non-financial (eg, caring for children and homemaking)
3. Consider the future needs of both parties such as age, health, financial resources, care of children, income earning ability
4. Agree on a% split of the Net Assets that is "just and equitable"

Financial Settlement consent orders can be lodged with the Family Court as soon after separation as you wish - there is no minimum time limit.

However, there is a maximum time limit in which to do property settlements. This is one year after a Divorce order has been lodged for married couples and two years after the date of separation for de facto couples.

Child support and parenting orders are not included in the Financial/Property Settlement.

DIVORCE

Divorce is an order by a court that officially ends a marriage.

Financial/property settlement, parenting orders and child support are not part of the Divorce application.

The Federal Circuit Court of Australia and the Family Court of Western Australia has the power to grant a divorce under Part VI of the Family Law Act 1975. If you meet the criteria to apply for a divorce in Australia, you can choose to apply for a divorce on your own or jointly with your spouse.

The Family Law Act 1975 has established a no-fault divorce in Australian law - this means that a court does not consider which partner is at fault in the marriage breakdown. The only ground for a divorce is that the marriage broke down (the "why" is not relevant) and there is no reasonable likelihood that the parties will get back together.

You are able to apply for a divorce in Australia if:

- You and your spouse have lived separately or apart for at least 12 months
- There is no reasonable likelihood that you and your spouse will resume married life

Either you or your spouse meets the Australian eligibility tests.



**GOOD COMMUNICATION
IS THE BRIDGE BETWEEN
CONFUSION AND
CLARITY.**

The importance of good communication with your ex during separation.



The importance of good communication with your ex during separation.



Separation can be hard. When kids are involved, it is harder still. Then add property, superannuation and a myriad of other financial facts to the mix, and it's clear why divorce is one of life's most stressful events. To top it off, it has to be successfully navigated with our ex-partner with whom tensions are often already high.

Whether your relationship with your ex is amicable, passable or at an all-time low, working towards good communication is the best thing you can do. It will benefit you now and way into the future.

Here's why good communication is so important during divorce and separation.

IT WILL MAKE YOUR LIFE EASIER

Who doesn't want a peaceful life? Healthy, effective communication makes everything easier, faster and less stressful. If you and your ex can navigate the difficulties of your financial separation successfully, you have forged the way for an easier future for both of you.

This will involve learning to engage with each other differently whilst accepting the changes and treating one another with respect. Once these new ground-rules are in place, you will find life is a whole lot easier for everyone.

IT WILL MAKE YOUR KIDS HAPPIER

Divorce is difficult for children, but conflict between their parents is harder. For any parent, putting their children through a divorce is heart-wrenching. Yet, you have the power to control how it affects your children both now and in the future. For many children, watching their parents navigate divorce is a lesson. If they can see you and your ex communicating effectively and getting results that work for the whole family, they will feel safe. If they see you both working together to make their lives better, they will feel loved and happy.

IT WILL SAVE YOU MONEY

If you are able to work with your ex, rather than against him/her, during your separation period you will definitely save money. The first mistake an ex-couple can make is to engage separate lawyers to 'fight their corner'.

This may create unnecessary costs for both parties, and will likely cause further communication break-down as the 'he says, she says' continues courtesy of costly lawyer's letters and phone calls.

Pulling down barriers and talking to your ex, or communicating through a central point which encourages amicable and cost-effective outcomes, will leave you better placed financially at the end of it all. This, in-turn, gives you more choices and a better footing in your new single life.





IT WILL MAKE YOU A BETTER CO-PARENT

Successful co-parenting is achieved by good communication between parents. For anyone doing it, you will know the obstacles and intricacies involved in living between two homes. Without a high-level of communication this can all come crashing down, and your children are the ones who suffer.

Creating new boundaries and rules around communication early on in your separation will allow you to step into your new co-parenting role with confidence. You and your partner will be able to role model to your children what a healthy, happy separated family should look like. This will allow your children to thrive and enjoy their childhood, without worrying about where their school uniform is or which house they are staying at.

IT WILL ALLOW YOU TO MOVE ON

Good communication with your ex-partner is more than just getting through your financial separation. If you communicate openly you can tie-up the loose ends of your relationship, which will allow you to accept, learn and ultimately move on with your life.

Remember, if you have children, your life and that of your ex will always be inextricably linked. If you have learnt to communicate well, your ex may become just another friend who will be happy for you to move on with your life, as they do with theirs.

Property settlement preparation checklist

- Bank statements
- Car registrations
- Centrelink payments received
- Child support assessment
- Company and trust financials
- Company constitutions
- Credit card statements
- Health insurances
- Investments, including shares
- Lease agreements
- Mortgage and loan statements
- Payslips
- Property rates notices
- Rental and dividend statements
- Superannuation statements
- Tax returns
- Trust deeds
- Utility invoices
- Valuations

Note: This is a simplified checklist. For more help gathering documents for your separation, book a free chat with us.

Are you ready to separate the
smart way?

Book a free chat via the Divide
website to discuss your situation.

Belinda

