

How debts are treated in family law property settlement

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In Australia, family law property settlement involves not only the division of assets but also determining responsibility for debts. Debts can take many forms, from credit card debt to mortgages and personal loans. The treatment of these debts during a property settlement is a critical issue that needs to be addressed carefully.

This article will explain how debts are treated in a family law property settlement, including debts incurred after separation but before settlement.

Understanding family law property settlement

A property settlement is the division of assets and liabilities between parties following the breakdown of a marriage or de facto relationship.

Property settlements are based on the principles outlined in the Family Law Act 1975 (Cth). The Court considers various factors when dividing the property, such as contributions to the marriage or de facto relationship, the future needs of each party, and the financial circumstances of both individuals. The goal is to reach a fair and equitable outcome for both parties.

In addition to dividing property, the court also considers how debts should be handled. The way debts are treated in a property settlement can significantly affect each party's financial future.

Types of debts in family law property settlement

In family law, debts can be broadly divided into two categories:

Joint debts

These are debts that both parties are responsible for, such as joint credit card debts, joint loans, or mortgages. Joint debts are typically shared equally between both parties, although the Court may alter the distribution based on each party's specific circumstances.

Individual and personal debts

These are debts incurred by one party during the relationship or after separation. If the debt was for the benefit of the relationship or family (e.g. a loan for a family vehicle or home renovations or some tax liabilities), then it may be included in the property settlement. However, a debt incurred for personal use (e.g. gambling or luxury spending) will usually be allocated to the benefiting party.

How debts are divided in a property settlement

When determining how debts are allocated, the Court will consider the following:

Joint debts

Debts are assessed by the Court in a similar manner as the Court considers assets of the parties.

The Court will consider contributions (initial, during and post-separation) and then future needs of the parties when assessing orders relating to joint debts.

For those who are retaining the asset, it often makes sense that the party who is retaining the asset keeps the associated debt. For example, if you are keeping the house, the Court is likely to order you are to refinance the home loan into your sole name.

Individual debts

Debts that were incurred by one party may be treated differently depending on the nature of the debt and when it was incurred.

If the debt was incurred for personal reasons or after separation, the person who incurred the debt may be solely responsible for it. However, if the debt was used for family or relationship-related expenses (even though it was in one party’s name only), such as a loan for a family car or renovation, the debt could be considered in the overall property settlement.

Debts incurred after separation but before property settlement

One of the key questions in property settlements is how debts incurred after separation are handled.

The general principle is that debts incurred by either party after separation are the responsibility of the person who incurred them. However, there are exceptions, particularly when the debt was used for the benefit of both parties or for children of the relationship.

It's important to seek legal advice if you're experiencing difficulties negotiating a fair and equitable property settlement, particularly if there are disputes about debts incurred after separation.

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Key takeaways – dealing with debts in property settlement

Personal debts after separation

If one party takes on a debt after separation, such as a loan or credit card, they will typically be solely responsible for that debt when orders are made. This includes debts related to personal expenses, such as shopping, entertainment, or individual living costs.

Debts for shared or family expenses

If the debt was incurred for the benefit of the family or both parties, such as maintaining the family home or supporting children, it could be considered in the property settlement.

Post-separation assets and liabilities

The Court may also consider how any debts incurred after separation affect the overall division of property. If one party has significantly increased their liabilities after separation, the Court may consider this when considering what liabilities should be included in the asset pool, and the whether it is just and equitable for the other party to be held accountable for any part of these debts.

Contributions to the relationship and debt allocation

When dividing assets and debts after separation, the contributions made by each party during the marriage or de facto relationship are a key factor. Contributions can include:

financial contributions (such as wages or investments);

non-financial contributions (such as homemaking and caring for children); and

contributions made after separation.

Contributions to paying off debts

If one party contributed significantly to paying off the joint debts during the relationship, this may influence the division of debts. For example, if one party paid off the home loan or other debts, they may receive a larger share of the assets. This will be dependent on the individual circumstances of each matter.

Post-separation contributions

The contributions made by each party will be assessed at the date of trial (or at the time that a consent order or financial agreement is finalised) and not at the date of separation. Therefore, contributions made in the post-separation period may be considered relevant to the Court or any negotiations.

Impact of debts on property settlement

While dividing debts is an essential part of a property settlement, it's also crucial to understand how debts can impact the overall division of assets. The Court looks at each party's financial situation, future needs, and the impact that debts will have on each party's ability to move forward.

Effect on financial stability

Debts significantly impact the financial future of both parties. If one party is left with substantial debts but few assets, it may affect their ability to rebuild financially. Courts take this into account when determining settlements.

Future needs and debt

Future financial stability is also a factor. The Court is unlikely to make orders which make it impossible for a party to comply.

For example, the Court will take into account the parties' earning capacity when making orders for who is to pay a home loan. If one party cannot earn the monies, or has no capacity to pay a home loan, then the Court is more likely to make orders for the property to be sold than an order which a party cannot comply with.

Seeking legal advice for debts in property settlements

Dealing with debts in a property settlement can be complex, especially when there are joint debts, individual debts, and debts

incurred after separation. It is important to seek legal advice to understand your rights and obligations, particularly if you have significant debts or if you disagree with how the debts should be divided.

An experienced family lawyer can help you navigate the process and ensure that your debts are treated fairly in the property settlement. They can also assist in negotiating a settlement that accounts for your future needs and secures your financial future.

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