



What happens if my ex-partner declares bankruptcy after separation?

Date: Sunday March 16, 2025

Separation can be a difficult and emotional time for everyone involved. Now, imagine how much more complicated it would become if your ex-partner declared bankruptcy after you've separated. It is crucial that you understand how bankruptcy can impact your rights, finances, [property settlement](#) and even [parenting arrangements](#).

This article will explain what may happen if your ex-partner declares bankruptcy after separation and what steps you can take to protect yourself.

What is bankruptcy?

Bankruptcy is a legal process in which an individual who cannot repay their debts may have their financial affairs dealt with by a trustee. In Australia, there is no minimum or maximum amount of debt to be eligible to apply for bankruptcy. There are two criteria which must be met:

The person is unable to pay their debts when they are due;

The person is in Australia or has a residential or business connection to Australia.

When a person is declared bankrupt, their assets are typically sold off to pay creditors, and their ability to borrow money or enter into contracts can be significantly limited. Bankruptcy typically lasts for [three years and one day](#), but the period can be extended if there are complications.

Potential impact on you of your ex-partner declaring bankruptcy

If your ex-partner declares bankruptcy, the way their debts are managed may affect you. This is especially true if you still share any finances together.

Shared debts

If you and your ex-partner had joint debts, such as credit cards, loans, or mortgages, bankruptcy could affect your ability to pay these debts.

Responsibility for joint debts: Even if your ex-partner is declared bankrupt, you may still be held responsible for any joint debts.

Debt collection: If your ex-partner's bankruptcy does not fully discharge the debt, creditors may seek payment from you. It's important to know your rights and obligations regarding any joint debts, as you may still be legally required to contribute to repayment.

You can read about debts in family law in our earlier blog, [“How debts are treated in family law property settlement?”](#)

Seeking legal advice early can help you mitigate any risk and protect your financial interests.

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Child support and spousal maintenance

If your ex-partner owes [child support or spousal maintenance](#), bankruptcy can complicate these payments.

Child support: In Australia, child support payments are not typically affected by bankruptcy. Services Australia – the federal government agency that delivers child support services - will continue to pursue payment, regardless of your ex-partner's bankruptcy.

Spousal maintenance: If spousal maintenance is owed, bankruptcy may impact your ability to receive those payments. While bankruptcy does not eliminate the obligation, it can delay payments until the bankruptcy period is over or the debts are settled.

Property settlement and bankruptcy

A property settlement is an agreement or court order that divides assets and liabilities between separated couples. When one party declares bankruptcy, it can impact the property settlement.

Bankruptcy trustee's role: If your ex-partner declares bankruptcy during or after your separation, a bankruptcy trustee may be involved in their financial affairs. The trustee will oversee the sale of assets and distribution of any funds.

Your entitlement: If the property settlement is yet to be finalised and your ex-partner declares bankruptcy, your entitlement to the settlement may be delayed or reduced. It's important to get legal advice to ensure your rights are protected.

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Effect on business assets

If your ex-partner owns a business, the bankruptcy process could affect their ability to continue running that business. The trustee may liquidate business assets to repay debts.

Business debts: If there were business debts incurred in joint names or if you were a guarantor for any business loans, you might still be liable for those debts.

Asset division: If business assets are involved in your property settlement, the bankruptcy could complicate the process, making it harder to divide assets equitably.

You can read more about dividing business assets in our earlier blog, [“Dividing business assets in family law property settlements”](#).

How to protect yourself if your ex-partner declares bankruptcy

Dealing with a former partner's bankruptcy can be difficult, but there are steps you can take to protect yourself.

Seek legal advice

It's crucial to get legal and/or financial advice to understand how bankruptcy might impact you. A family lawyer or financial advisor can help you:

assess your financial rights and obligations in light of your ex-partner's bankruptcy;

ensure your property settlement is fair and enforceable; and

review any potential impact on child support or spousal maintenance.

Review property settlement negotiations

If you haven't reached a property settlement yet, you should prioritise finalising the division of assets. If your ex-partner is about to declare bankruptcy, getting a legally binding property settlement in place can help you secure your financial interests.

Consent Orders or Binding Financial Agreements (BFAs): A [consent order](#) or [BFA](#) can provide legal protection and outline your rights in the event of future bankruptcy.

Superannuation: Superannuation entitlements (for example, [superannuation splitting](#)) may be included in property settlements, so it's important to address this during negotiations.

Protect your credit

If your ex-partner declares bankruptcy and you are still responsible for joint debts, it's essential to protect your credit.

Notify creditors: If your ex-partner's bankruptcy affects any joint debts, notify creditors and inform them of the change. This can prevent misunderstandings or wrongful claims against you.

Manage your debts: Stay on top of any debts you are still responsible for. Missing payments could affect your credit rating and financial situation.

Be prepared for delays in your property settlement

Bankruptcy can delay property settlements, especially if your ex-partner's assets need to be liquidated. Understand that this process can take time, and plan accordingly for any disruptions.

Postponed settlements: If your ex-partner has not yet entered bankruptcy, it's important to finalise your settlement quickly to avoid complications.

Trustee involvement: If the trustee becomes involved, they may oversee the property settlement, which could take time.

Monitor child support payments

If your ex-partner is required to pay child support, it's important to monitor payments regularly. While bankruptcy doesn't typically affect child support obligations, it may impact your ex-partner's ability to pay. If they fail to make payments, you should contact Services Australia to explore your options.

Services Australia will continue to pursue your ex-partner for payment, regardless of their bankruptcy status. However, you may experience delays if their financial situation worsens.

Get help from a family lawyer

While it's never easy to deal with an ex-partner's bankruptcy after separation, understanding how it affects you is crucial for protecting your financial interests. Bankruptcy can complicate matters such as debt repayment, property settlements, and spousal maintenance, but with the right legal guidance and financial planning, you can mitigate these effects.

Remember to:

seek professional advice (legal and/or financial);

finalise any property settlement agreements before bankruptcy is declared;

protect your credit rating and financial assets.

With experienced professional advice early, you can navigate this challenging situation and ensure that your rights are protected throughout the process.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.