

Financial issues after separation

When you and your partner separate, it is important for you to organise your finances. Find and organise your:

- utility bills (e.g. electricity, gas and phone)
- credit cards
- bank accounts
- property/home loan details
- tax records
- insurances
- wills
- superannuation
- any business documents

Credit cards

If you have a joint credit card:

- If you can pay what is owed, do so and close the account
- If you cannot pay what is owed:
 - Let your lender know you have separated
 - Ask that no further credit be given on the account
 - Talk about payment options

If your ex-partner has a second card on your account:

- Cancel the second card

Bank accounts

- Consider opening a bank account in your name only and have your pay and Centrelink benefits paid into this account.
- Consider closing any joint bank accounts. If you and your ex-partner are unable to agree how to divide the money in the joint account and/or cannot close the account, you should let the bank know you have separated.

Your mortgage

- Let the lender know you have separated
- If you have moved, arrange for statements to be sent to you at your new address
- Consider cancelling any redraw options on your home loan or ask the bank to require joint signatures for any withdrawals
- Consider cancelling any linked credit cards

Utility bills

- If you are staying in your home, put all utility bills (telephone, internet, electricity, gas, water etc) in your name only. If you are moving out, take your name off all utility bills.

Financial hardship

- If you are finding it hard to keep up with your bills, talk to the company and let them know you are experiencing financial hardship.

Mortgage repayments

- Work out a plan to cover mortgage repayments.

You may be having trouble with your mortgage repayments because your partner is unwilling or unable to help you pay. You may also have received documents from your lender such as an arrears letter, default notice, threat of legal action, court documents or a Notice to Vacate.

Negotiate: Talk to your lender about changing or reducing your payments for some time or negotiate some other solution like getting time to sell your home.

Lodge with EDR: You can complain to an External Dispute Resolution (EDR) scheme if you and your lender cannot agree on a solution. EDR is free and user-friendly. You may be able to lodge a complaint with the Australian Financial Complaints Authority (AFCA) on 1800 931 678 or visit www.afca.org.au. Once you are in an EDR the lender cannot take any legal action against you about the money you owe until the dispute is finalised.

If you have received a default notice or legal proceedings have commenced, then your matter is urgent. You should get legal advice immediately.

Legal protection

- If your home is only in your ex-partner's name, you should get legal advice.

Your rented home

- If you are renting and are going to keep living there, contact your real estate agent or landlord and change the rental agreement so that only your name is on it. Put all utility bills in your name only.
- If you are renting and are moving out, contact your real estate agent, or landlord, to take your name off the rental agreement. Also make sure your name is taken off the utility bills.

Moving out

Both you and your ex-partner are entitled to live in your home after separation regardless of whose name is on the rental agreement or the title of the property.

If the property is in your name, you can change the locks. However, if the property is in joint names, your partner also has the right to change locks.

Property in joint/sole names

If you move out, it will not affect your entitlement to a share of the property. However, if you move out, then you will usually be the one who needs to act first to get your entitlements, and you may lose your personal property and effects if you don't take them with you when you leave.

If the property is in your ex-partner's sole name or they have taken steps to sell the property, you should get legal advice immediately.

Rental property

If you are moving out of a rental property, your tenancy status will affect the options available to you. In most cases, you will have to provide your landlord with notice. You should get legal advice about notice as soon as possible. In most cases, there are fees for terminating leases early.

Apprehended domestic violence orders

If your partner has perpetrated domestic violence against you, you may want to:

- Remain at the rental property and ask the perpetrator to leave OR
- Leave and end your legal liability

If you wish to remain at the rental property, you are able to take action to end the tenancy of the perpetrator with a final Apprehended Violence Order (ADVO) against the perpetrator (defendant) and an exclusion order.

Changing the locks

Normally, you need the landlord's consent to change the locks, however, there are special provisions that allow a victim of domestic violence to change the locks without a landlord's consent in certain circumstances.

For example, you can change the locks without consent in an emergency or if you have an ADVO with an exclusion order against another tenant or former occupant. This applies if the ADVO is a provisional, interim or final order. You need to give the landlord or agent a new key within seven days, unless agreed otherwise. Changing the locks does not affect the tenancy agreement.

Changing the tenancy agreement

If you obtain a final ADVO with an exclusion order against the perpetrator and that person was named as a tenant on the rental agreement, the final ADVO will terminate their tenancy.

If you were named on the agreement as a co-tenant, the tenancy simply transfers to your name. If your name is not on the agreement, you can ask the landlord or agent to have the agreement put into your name. If they refuse you can apply to the NSW Civil and Administrative Tribunal (NCAT).

If you are in social housing premises, you should contact the social housing provider for more information.

An **Apprehended Violence Order (AVO)** is a court order that aims to protect a person (the person in need of protection or PINOP) from another person (the defendant) that causes them to fear for their safety.

An **Apprehended Domestic Violence Order (ADVO)** is made where the people involved are related or have had a domestic or intimate relationship.

An ADVO may include an exclusion order which prohibits the defendant from residing, entering, or going within a specified distance of the protected person's home or work.

Leaving

A victim of domestic violence can end their tenancy immediately and without penalty, by giving a notice of termination, which includes evidence of domestic violence. Evidence of domestic violence includes:

- a copy of a current ADVO (need not be final) protecting you or your dependent child/ren; or
- a personal protection injunction under the *Family Law Act* protecting you or your dependent child/ren; or
- a copy of a certificate of conviction in proceedings against the relevant domestic violence offender for a domestic violence offence against you or your dependent child/ren; or
- a declaration by a medical practitioner that you or your dependent child/ren are victim/s of domestic violence.

For more information, contact the Tenants Advice and Advocacy Services at www.tenants.org.au/contact-us.

NCAT

You may also apply to the NSW Civil and Administrative Tribunal (NCAT) to terminate or vary the tenancy on the basis of 'special circumstances'.

For more information, contact the Tenants Advice and Advocacy Services at www.tenants.org.au/contact-us.

Recovering personal property

If you are applying for an ADVO and you have left personal property with your ex-partner, you can ask the Court for an order that the property be returned to you. This is called a 'Property Recovery Order'. You should prepare a list of the property you want recovered and talk to the police officer handling your matter, your solicitor, or the Domestic Violence Liaison Officer.

Orders may be made about personal belongings only, including personal documents and clothes. In most cases a police officer will come with you to get the property.

A Property Recovery Order can only be made at the same time as a provisional, interim or final ADVO is made. If you need to collect your belongings urgently and can't wait until the matter is heard in Court, you should contact the police, as they may be able to help you get your belongings. The police can't help you take property if you and your ex-partner disagree about who owns it.

Joint loans/debts

- If you have signed a loan contract as a joint borrower or guarantor, let your lender know that you have separated
- If you are finding it hard to keep up with your loan repayments, let your lender know you are experiencing financial hardship
- If you were the director of a family business or partner in a family business, get legal advice

Wills, insurance and super

- Update your will as being separated does not cancel your existing will
- Update your life insurance policies so you have the right cover and check if the beneficiaries need to change
- Update your superannuation to make sure the payout goes to who you want
- Consider updating any powers of attorney you have given as these may not be cancelled when you divorce or separate

Centrelink

If you receive Centrelink payments or services, tell Centrelink of any change in your circumstances immediately. You may be entitled to additional funds.

A change in circumstances include: if you separate, your income or assets change, your rent changes or if your child stops living with you.

If you have deliberately given Centrelink incorrect information you may have to pay back the money, be charged with a criminal offence and end up before a Court. Centrelink fraud is a serious criminal offence.

Child Support

If you have a child or children under the age of 18, you may be able to apply for financial support for the children from the other parent. Contact the Department of Human Services, Child Support on **13 12 72**.

In certain circumstances, over 18 maintenance is also payable by the other parent if the young person has a disability that prevents them from working or is engaged in full-time education and the over 18 maintenance is reasonable and necessary to allow them to complete their education. Over 18 maintenance must be sought either through a mediation with the other parent resulting in a court order by consent or by order of a judge. For legal advice about child support or over 18 maintenance, contact Legal Aid NSW's Child Support Service on **(02) 9633 9916 (Sydney)** or **1800 451 784 (Regional NSW)**.

Getting help

Legal advice

- LawAccess NSW: contact 1300 888 529 or see www.lawaccess.nsw.gov.au
- Legal Aid Early Intervention Unit: contact 1800 551 589 or see www.legalaid.nsw.gov.au
- Legal Aid Domestic Violence Unit: contact (02) 9219 6300 or see www.legalaid.nsw.gov.au
- Aboriginal Legal Service: contact 1800 733 233 or see www.alsnswact.org.au
- Financial Rights Legal Centre: contact 1800 007 007 or see <http://financialrights.org.au/>
- Salvos Legal Humanitarian: find an Advice Bureau at www.salvoslegal.com.au/expertise/humanitarian-free-legal-service/
- Tenancy Advice & Advocacy Service: www.tenants.org.au/contact-us
- Women's Legal Service NSW: 8745 6900 or 1800 810 784 DV Legal Advice Line
- Wirringa Baiya Aboriginal Women's Legal Centre: 1800 686 587 (NSW only) or (02) 9569 3847

Financial counselling and assistance

- National Debt Helpline: 1800 007 007
- Salvation Army's Moneycare: <https://salvos.org.au/need-help/financial-assistance/financial-counselling/>
- ASIC Money Smart: www.moneysmart.gov.au
- Centrelink Financial Information Service: 136 357

Accommodation

- Link2home Homelessness: 1800 152 152
- Domestic Violence Line: 1800 656 463
- Housing Contact Centre, FACS Housing Services: 1800 422 322

Counselling and social support

- Domestic Violence Line: 1800 656 463
- 1800 Respect: 1800 737 732:
- MensLine: 1300 78 99 78
- Family Advocacy & Support Service: 1800 11 FASS (Women) and 1300 00 FASS (Men)

Other services

- Translating and Interpreting Service: TIS can help you talk to the above services in your language: 131 450
- Hearing/speech impaired services: TTY 92195126 or via the National Relay Service (NRS) 133677

This fact sheet is intended as a general guide to the law. It should not be relied on as legal advice and it is recommended that you talk to a lawyer about your particular situation. At the time of writing, the information shown is correct but may be subject to change. If you need more help, contact LawAccess NSW on 1300 888 529.

Family Law Early Intervention Unit: 1800 551 589 • Legal Aid NSW www.legalaid.nsw.gov.au