

High Income Families, Separation and Domestic Abuse



Many women find themselves in a marriage or de facto relationship where they enjoy a high standard of living, but have no control over the family finances. These women often have no idea about their partner's income, share holdings, superannuation, business or trust structures.

In some high-income families, control of the household finances is one of the most powerful ways that men maintain power over their partners. Many women in this situation are totally reliant on their partners for even the most basic necessities – although some may work part-time or hold professional positions.

This kind of control can make it extremely difficult for women to leave their relationship, let alone negotiate a fair property settlement. And if there are children involved, it makes the situation even more complicated.

However, the right kind of information and support not only gives women a better understanding of their options, but also shows them how to unravel the complexities of their household finances and ultimately access what is rightfully theirs.

Commonly held myths

- Our family business gives us a very comfortable lifestyle but he says if I take my share when I leave we'll be bankrupted and there won't be any money for the kids' education, holidays, clothes etc.
- You can easily tell the men who have total control over their wives – they're usually aggressive, unpleasant people.
- He says the money is all tied up and hidden away in trusts, so it's better to cut my losses and just leave.
- She's a professional career woman – it must suit her to let her husband handle the financial side of their lives.
- Domestic abuse mostly happens in low-income families.

And the reality...

- Don't take your partner's word for the state of your family's finances. Threatening bankruptcy is just one of many tactics that abusive partners will use to make you feel powerless and try to prevent you from leaving.
- Most abusive men don't look aggressive. They often appear to be successful, charming and well-regarded members of their community.
- There are legal ways of finding out how much money is 'hidden' in complex corporate structures, or trust funds. If you are leaving your marriage or relationship, you are legally and morally entitled to a fair share of all the combined assets.
- Professional women, like any others, may not be allowed to know how the family's finances are organised. Some men will use money to control their partner's behaviour – what she spends, how it is spent, where she goes etc – under the guise that he is better able to understand the complexities of handling and investing large amounts of money.
- Domestic abuse affects women from every class, income level and cultural background. In high income families it can be hidden behind a façade of a beautiful house, designer clothes, private schools, exotic holidays etc.

What is domestic abuse?

Domestic abuse is about power and control – usually men using their power to control and intimidate women. It includes verbal, emotional, sexual, physical and financial abuse – in fact, any behaviour that hurts or restricts what you do, and makes you feel powerless, or scared.

What can I do to make sure I get my fair share?

If you are planning to end your relationship, it is crucially important to get a clear picture of your financial situation and begin to make plans **before** you leave. This may not be an easy thing to do, especially if your partner keeps everything hidden or under lock and key. You will also probably want to search for this information when it is safe in order to avoid conflict or an escalation of abuse. And this will mean being very brave and strong.

Just remember that any information you have will help you negotiate a fair property settlement later on. So, do your best to:

- find out as much information as you can about your partner's and the family's finances
- make copies of as many financial documents as you can, or if this is too difficult, draw up a detailed list of all the assets and debts that you know about (both joint and personal), including names and numbers of accounts, contacts details, amounts etc
- seek advice from a lawyer who is completely independent from your partner, to find out exactly what your legal rights are – even if you choose not to take legal action.

What does property settlement actually mean?

Property settlement is not about who paid for what or whose name is on the title of the house. It relates to the total amount of assets, liabilities and wealth accrued throughout a relationship.

For married couples it is determined by looking at two areas:

- financial and non-financial contributions
- future needs.

For de facto couples, the first area applies, but not the second.

In Victoria, the act determining your property settlement depends on whether you are married or in de facto relationship. For more information about the differences between the *Family Law Act* (for married couples) and the *Victorian Property Law Act* (for de facto couples) see WIRE sheet *Separation – Property*.

So what is property?

Specifically, a property settlement takes into account:

- income from salary or wages
- homemaking and parenting contributions
- assets acquired during the relationship
- contributions to the conservation or improvement of your home and other real estate, including renovations and maintenance
- paid and unpaid contributions to the business
- financial contributions made at the beginning of the relationship
- the length of the relationship.

How can I protect my assets?

Many women often feel powerless when they've made the decision to end their relationship, particularly if they have no knowledge or control over their finances. Threats to declare bankruptcy or claims that all the money is in trusts can make a woman feel even more vulnerable, especially if their partner operates a business or is an independent contractor.

There are, however, a range of things you can do to ensure your assets are protected. With help from various people (eg lawyers, accountants and others), you can:

- look behind corporate and trust structures to determine the net worth of an individual or company
- interpret balance sheets and other financial documents to trace money and work out the real, not taxable income
- conduct business name, share registry and property searches to determine an individual or company's assets
- issue subpoenas demanding the release of documents relating to companies, businesses, banks, superannuation funds and other entities
- lodge a caveat over your property if you're concerned that your partner may try to sell the property prior to settlement
- apply for Restraining Orders or Notification Orders which prevent your partner from dealing with assets without first notifying you. For more information about restraining orders see WIRE information sheet *Getting Legal Advice*.

What about debts?

If you and your partner have joint debts, you may be liable for half the debt, even if you haven't benefited personally from borrowing the money. You may even be in the situation where you have signed a loan contract as a guarantor, agreed to become a silent director of his company, or signed a mortgage so that he can obtain a loan for something he alone will use.

It is important to keep copies of these documents (or at least keep a record of documents you have signed) so that you are able to resolve the issue of liability for the debt at the final property settlement. You can also be removed from company directorship as part of your settlement which will ensure you are protected from taxation charges in the future.

See also WIRE information sheet, *Women & Debt* and *Separation – Property*.

Where does superannuation fit in?

Women who have stayed at home to raise their children or have partners who have not wanted them to work, often have little or no superannuation. This is now acknowledged by Family Law legislation which states that superannuation can be split in the same way as other assets.

However, this legislation only applies to married couples. If you are in a de facto relationship you will need to get some legal advice about your rights and options.

Can I stay in my home?

You may want to stay in the family home and get your partner to leave, particularly if you have children. If this is your preference, you should talk to your lawyer to see how you can achieve this.

In certain circumstances, you may be able to apply to the Family Court of Australia for 'sole use and occupation' of the family home. If your application is successful your partner will be ordered to leave. (It is important to understand though, that this has no bearing on your property settlement.)

If your partner is violent, or you feel threatened, you can obtain an intervention order from the Magistrates Court of Victoria which will mean that he is not allowed in, or anywhere near, the family home. For more information see the WIRE information sheet *Getting Legal Advice and Domestic Violence*.

Do I have to go to court?

If you are able to work out an agreement with your partner that gives you a fair share of the property, you can have it registered by the Family Court so that it is legally binding and enforceable. But make sure you get independent legal advice before you sign the agreement.

If you are finding it difficult to reach an agreement, it may be worth considering using a professional mediator. For more information see WIRE information sheet, *Separation – Property*.

Unfortunately, some men deliberately and maliciously prolong the whole process, only agreeing to a settlement at the 11th hour when the case is just about to be heard.

When you don't exactly know what assets your partner has, you may need to go to court. If you are married, the Family Court of Australia will hear your case. If you are in a de facto relationship either the Supreme, County or Magistrates Courts will hear your dispute.

Pre-nuptial agreements

Sometimes women who are intending to marry or begin a relationship with a man who has extensive assets are asked to sign a Binding Financial Agreement or Pre-nuptial Agreement. If this is the case, make sure you seek legal advice before signing (regardless of what he thinks) because once the agreement is signed, it will determine your property settlement if you separate or divorce later on.

There are, however, certain situations where pre-nuptial agreements can be challenged. If you can show that:

- there has been a significant change in your circumstances since signing the agreement (eg the birth of children)
- your partner used coercion to get you to sign the agreement
- the agreement itself is unreasonable.

Getting legal advice

Some women who are leaving an abusive relationship may have little or no money with which to pay for legal advice, let alone embark on complex investigation for hidden assets.

It is important to know that, if you are in this situation, you do have options to ensure that you get independent advice, representation and ultimately a fair deal.

- Try contacting Legal Aid Victoria to see whether you are eligible for assistance.
- Many reputable solicitors will agree to represent you and defer payment of fees until the final property settlement. Make sure you get a written account of what their fees are likely to be.
- If you are married, you can apply to the Family Court for a *Barro* order which states that your partner will have to pay a certain amount of the legal costs. This amount will be taken into account when the property settlement is being finalised.

See also WIRE information sheet *Getting Legal Advice*.

Where do I go for help?

- WIRE
- Victoria Legal Aid
- * Law Institute
- Women's Legal Service
- Legal-on-line

Contact WIRE

For an up-to-date contact list of the services available:

Phone 1300 134 130 for the cost of a local call, or
13 36 77 (National Relay Service for hearing impaired women)

Drop in to the Women's Information Centre at 247 Flinders Lane Melbourne

Email us at inforequests@wire.org.au

Visit our website www.wire.org.au

References

Separation and High Net Wealth Individuals, Middletons, briefing document

You & Family Law, 4th Edition, Victoria Legal Aid, October 2000

Property Settlement – Dividing Property after Separation, Women's Infolink Info Sheet 3, Department of Premier and Cabinet, Queensland Government, 2001

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