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OCTOBER 5 2016

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A financial agreement can help couples protect their assets if their relationship ends

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2 comments

When Jeanne-Vida (JV) Douglas and Simon Lyster decided to move in together, there was never any question they wanted to have some separation of finances and a written financial agreement.

It wasn't that they didn't trust each other but they had JV's two children, age 10 and 13, to consider. They had both been married before and wanted to think through any tricky issues ahead of time.



A financial agreement gives peace of mind for (from left) Simon Lyster, Galileo Lima, 10, Shahrazad Lima 13, and Jeanne-Vida Douglas, with cat Ivy. Photo: Kirk Gilmour

"We had both gone through a lot of growing as people [since our break-ups]," says JV, 40. "We are aware of taking care of ourselves and also aware of taking care of each other and of the kids."

"We wanted to make sure that if we broke up it was fair," says JV of the need for a financial agreement.

Many couples, whether married or de facto, choose to operate separate bank accounts. This can help people feel autonomy over their own finances, and ensure they have access to emergency funds.



JV and Simon on holiday together. Photo: Supplied

However, it provides limited protection in the event of a split, as property held in the name of one partner can be claimed by the other.

Under Australian law, de facto couples who separate after two years have the same rights as married couples with respect to property settlements; including spouse maintenance and claims on each other's super.

And with more people re-partnering and bringing children and significant financial assets into their new relationships, how to be fair to everyone can be tricky to negotiate.

Some couples ignore the issue and hope for the best. Others prefer to plan for what would happen in the event of a break-up.

Pre-nups

Simon and JV have been together for about 18 months and both have been previously married. When they were buying the house late last year, JV spoke to a family lawyer she has used in the past.

"I said to him that I was partnering with someone and he suggested getting an agreement," JV says.

JV says if they were to have more children together then the agreement would become null and void and have to be redesigned.

It is a binding financial agreement, colloquially known as a "pre-nuptial" agreement, even though JV and Simon are not married. Pre-nups can be drawn up during the course of a relationship not just at the start.

Under the law, if a couple lives together for just two years their financial assets can be divided the same way as if they had been married for decades.

[Australian Institute of Family Studies research](#) has measured the impact of a relationship breakdown on people's finances. Of course men can be worse off, but more often divorce has a substantial negative effect on the incomes of women, with women experiencing a fall in income of 21 per cent compared with their pre-divorce income.

Australia is a "no fault" divorce jurisdiction, which means there is no financial punishment for having an affair or walking out, though the Family Law Act does have power to consider domestic violence.

Jacqueline Wharton, who trained as a lawyer but is the founder of Separation and Divorce Advisors with offices in Sydney and Melbourne, says fighting over assets to punish your ex is nearly always a poisoned chalice.

"Trying to use the law to punish the other side for being unfaithful or for revenge is expensive and time consuming," Wharton says.

A financial agreement can give some peace of mind as to what will happen in the event of a break-up, she adds.

However, pre-nups have had a chequered history in Australia as some have been poorly drafted and have been overturned by the courts.

Patrick Parkinson, a professor of law at the University of Sydney and special counsel at a family law firm, [recently told Money](#) that valid pre-nups that have been drawn-up by lawyers who specialise in family law are binding and do oust the jurisdiction of the courts.

Geoff Wilson, of HopgoodGanim Lawyers in Brisbane, who draws up a lot of pre-nups, says pre-nups can be useful to anyone who has been through separation and court proceedings and does not want to go through that again.

"They can suit those who are bringing significant assets, indeed any assets, into the relationship, who stand to inherit, who have children and those with family businesses," he says.

It's not just for the wealthy, with rising property prices in Sydney and Melbourne likely to see significant assets accumulated in a relationship.

Laura Menschik, a financial planner and director of WLM Financial Services, says issues of inheritances, gifts and loans and who gets what is becoming more complex, especially with the increase in blended families.

The bottom line is to document as much as possible, particularly where there is a loan from one set of parents to help with the house purchase or to pay for the grandchildren's school fees, she says.

It is the same when there is an inheritance that goes towards paying off the house they both own.

A loan that is meant to be repaid should be documented as a loan so that if the relationship ends the parents providing the loan are repaid, Menschik says.

A standard pre-nup costs from \$5000, which can put some people off.

Wilson says "that would be a false economy" because the cost of drawing-up a `valCtrl+Snd`ing financial agreement could be a drop in the ocean compared with the assets at stake, the costs of legal contestation in the absence of an agreement and the extra emotional turmoil that entails.

He cautions against the cheap pre-nup kits, along the lines of DIY will kits, saying an agreement has to be drawn-up properly and each party should obtain independent legal advice.

Separate finances

[Relationship Australia research](#) has found that disagreements over money are a stronger predictor of divorce than other commonly cited causes of marital disagreements.

Among other things, the 2015 online survey by Relationships Australia found 7 out of 10 couples said money causes tension in their relationships.

It's important for JV and Simon not to be joined-at-the-hip financially.

JV and Simon have a savings account that is joined to the mortgage and they share a credit card, but they also maintain separate accounts.

Simon says he is fairly impulsive. "I will buy something nice, like clothes, and the important thing is that we are not dipping into our money to do that," he says.

"Openness has been the key to the whole thing for both of us. We wanted to make sure that we both had peace of mind and to make sure that JV and kids are protected and that if anything should happen to either of us that the kids would be looked after."