THE AGE

MONEY PLANNING & BUDGETING DIVORCE

The blindside: financial strain of divorce laid bare

By Nicole Madigan
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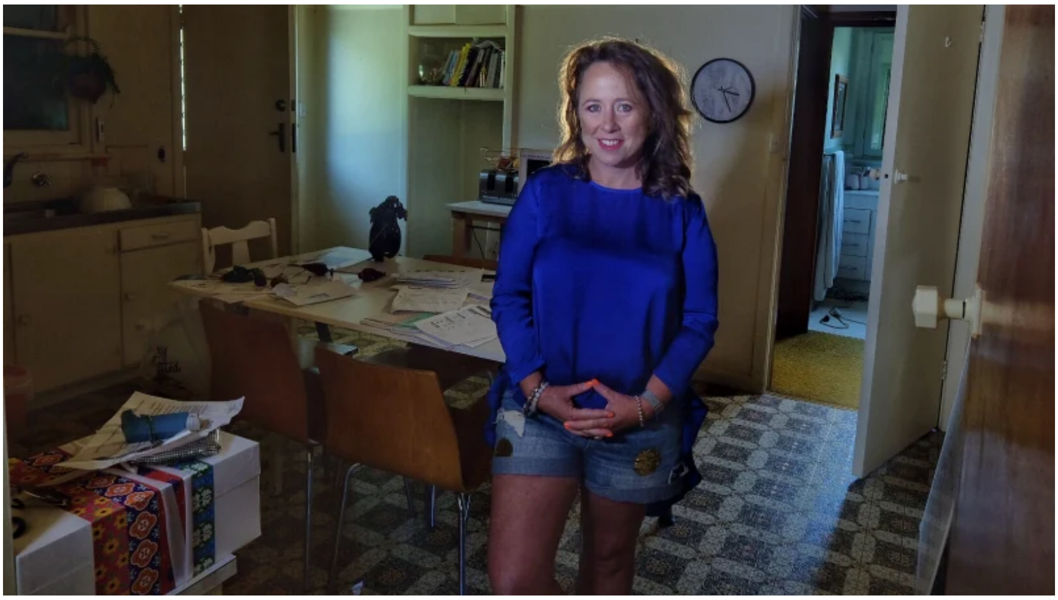
After dealing with the emotional strain that comes with ending a marriage, Renee Catt was completely unprepared when she was hit with property settlement negotiations just four days later.

"It all happened so quick," said Ms Catt, who has since become a professional divorce coach.



Renee Catt was caught completely unaware by the financial side of her divorce. LUIS ENRIQUE ASCUI

"One minute we were toasting with a glass of pinot to our divorce and the next, a storm, I was blindsided."

Although Ms Catt obtained legal advice, emotions took over, resulting in the loss of almost $100,000 and the majority of the equity in the matrimonial home.

For Edwina, who at 53 has found herself starting from scratch after her marriage ended, it was joint debt and concealed financial information that lost her the portfolio of property and shares she had built up over a lifetime.

“I was not aware that he’d already declared full bankruptcy in America [and] he had full access to my accounts and my credit.”

I ended up losing everything I had built up since my teens.

Edwina

In the end, all that was left was debt in Edwina’s name.

“I wanted him to take ownership of 50 per cent of the debt, he refused,” she said. “I ended up losing everything I had built up since my teens.”

In both cases, a lack of financial awareness, both within the marriage and generally speaking, contributed to the devastating outcomes.

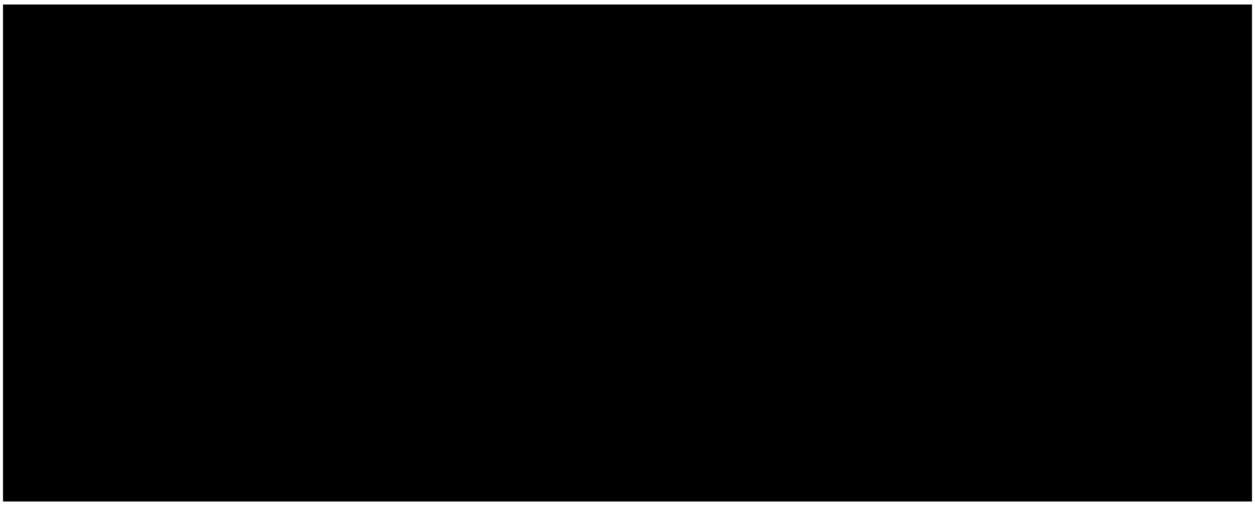
“It happens all the time in couples that one individual takes the lead on financial decisions and another is largely unaware of what’s going on,” said financial planner Michael Miller.

“It’s easy to understand why this happens – one individual might be more interested and we all have only so much mental energy to focus on the business of being an adult.

“But it does mean that if that relationship breaks down, the person who hasn’t been involved has to learn not only how to manage their finances but also where everything is, and negotiate a settlement, from a standing start.”

One of the most common misconceptions relating to family law is that cash or property held in one person’s name is automatically theirs following separation or divorce.

In fact, everything, including cash or assets held in a trust, goes into the asset pool and is up for negotiation.



Catherine Robson the founder of Affinity Private gives her top tips to reduce stress in your marriage by better managing your money.

But, the individual who holds the cash or asset does have an advantage, maintaining control until settlement takes place, and enabling them to more easily fund the process.

“Cash can be easily wasted and accordingly if one party has all of the assets or cash in their name and the assets can be disposed of and/or wasted, seeking to recover them or trace the expenditure can be an expensive exercise and take time,” said family lawyer Michael Small.

Furthermore, the value of those cash and assets is not calculated at the time of separation, but rather at the time of settlement itself.

“So if you are looking at a financial settlement in two years’ time at Court, that is the time that values for your property are looked at,” said family lawyer Courtney Mullen.

Other misconceptions include:

- *That superannuation is excluded from the asset pool. It hasn’t always been the case, but superannuation is now considered property and can be dealt with in a financial settlement.*

“The effect of this is that superannuation can be split from one party’s superannuation interest to another, to ensure that a ‘just and equitable’ division of property can occur,” said Ms Mullen.

“Without this, parents who take time out of the workforce to care for children [for example] would be worse off financially than their spouse if they were to separate.”

- *That inheritances or money gifted from family are excluded from the asset pool.*

“This is not often the case unless there is agreement about this.”

The timing of when the inheritance or gift was received will be important as well as any intention that the gift be repaid to your family.

- *That you can’t have a property settlement until you have divorced. In fact, you can have a property settlement at any point after you have separated.*

"The sooner you do it after separation, the less exposed you are to post-separation debt from your former partner, or protected from you acquiring assets post-separation that your former partner may have a claim on."

- *That you are in a defacto relationship if you have been living together for six months. Cases that have gone before the courts previously, suggest that two years duration of a relationship and/or having children together is sufficient to be considered 'defacto' – in some cases, defacto status can be given to couples who don't live together.*

"It is at the point in time where you are considered to be in a defacto relationship, or you have made a significant contribution to another person's assets, that there may be a claim in relation to defacto property," said Ms Mullen.

For women, especially those who have left the workforce to care for children, financial awareness is particularly important.

"The ability to earn income in the future provides a lot of resources for a financial plan when you're going it alone," said Mr Miller.

"If you don't have this, it makes the property settlement all the more important, because the outcome of the settlement is going to determine what's possible for the rest of your life."

Ms Mullen suggests that before couples pool their assets, they should discuss how they would intend them to be split if their relationship breaks down. And now might be a good time to do so, with the post-Christmas period seeing an increased number of separations.

"Be aware of how assets and income are likely to be treated in the event of a separation, especially if there is a significant imbalance in the financial positions between you," said Ms Mullen.

If you do find yourself separated, Ms Small said it's important to seek professional advice as soon as possible, and avoid relying on the advice of well-intended family and friends.

"Separation involves complex emotional issues as well as complex legal issues and these issues are intertwined and each impacts upon the other.

"Unfortunately we do not live in a perfect world and a separation can often bring out the worst in a person who has previously been your closest friend, lover and confidant."