



Check List for the Recently Separated

If you are married or were in a Defacto Relationship and have recently separated from your partner it's important that you consider doing a number of things initially in order to protect your interests. These include:-

Changing your Will

You may or may not have previously made a Will but you should certainly consider whether a Will needs to be made or an existing Will amended to ensure that your wishes will be carried out. Be aware that whilst marriage revokes a Will, separation from a partner does not do the same and it may be important to make changes to provide for your wishes, particularly if you have children. In the event that you have been divorced, that divorce will have the effect of “cancelling” any gift you have made to your former spouse, but otherwise the Will is still valid. This too can lead to a situation that you would not have wanted and therefore it is important to consider this very aspect at an early time.

Revoking any existing Powers of Attorney

If you have an existing Power of Attorney and have been married before more than likely you would have appointed your former spouse to be your Attorney. Depending on the terms of your Power of Attorney you may find that the Power of Attorney is still valid even though the marriage has dissolved and remains valid until such time as you revoke it. In some circumstances there may be a provision in your Power of Attorney whereby you may have nominated an alternative Attorney if your marriage has dissolved etc, however this is not always the case. It would be prudent, whether or not you have been married before, to check if you hold any existing Powers of Attorney and to whom you have granted that Power of Attorney too.

Severing joint tenancies for jointly owned real estate

Any Real Estate purchased together with any former partners may have been registered in both names as “Joint Tenants”. If this is the case then unless a transfer is lodged to sever the joint tenancy, should either of the owners die, their share of the property will automatically pass to the other owner named on the title. This applies even if a Will exists with contrary intentions. If you own any property with a former partner it is important to ensure a transfer has been lodged on that title to change ownership holding to “Tenants In Common” allowing for individual shares in the property. A property owned between partners as Tenants In Common allows each owner their individual share to decide to whom their share of the property may go to upon their death.



Changing your superannuation fund nominated beneficiary

If you have separated it is also important to consider changing the nominated Beneficiary on any Superannuation Fund entitlement held by you. Again, the terms of your Will do not alter the nominated Beneficiary of your Superannuation Fund and unless you alter or change your beneficiary and should you die the nominated Beneficiary for your Superannuation will stand.

Protection of Joint Moneys

If you have joint accounts with your former spouse or partner then you should take actions to protect yourself from having those funds removed from the accounts or an increase in any liabilities as a result of your former spouse or partner's actions. Examples of joint moneys would be joint savings accounts, re-draw facilities on a joint home loan or a joint line of credit. If those funds are organised on the basis that one person can access the funds without the authority of the other, which is quite common in today's internet banking age, and if you do nothing to protect yourself you could run the risk of your spouse or partner removing all moneys from your joint account, withdrawing any re-draw funds available from a joint mortgage or accessing a significant amount of money from a joint line of credit. Any of those actions could cause you significant hardship in both the short and/or long term. If you have any such accounts you should speak to your financial institution to look at what protections are available to ensure that there can be no unilateral access to funds by either party either by freezing those accounts or putting in place a system of dual authorisation for any transfers. Similarly if you have accounts in your sole name, however have provided your access details to your former spouse or partner or even if you have given them a credit card on your credit card account, you should consider whether you change those details or cancel that secondary card to protect you from having your own funds removed from your account without your authorisation or alternatively for large expenditure to be undertaken on your credit card which you would then be personally responsible for.

Protect your Personal Information

You should ensure that you protect your personal financial documents to ensure that your former spouse or partner does not remove those documents from your possession for the purposes of proceedings against you. Such protection would involve either photocopying all of the documentation and keeping the copies in a secure location which is not your home or motor vehicle or alternatively scanning copies of the documents and keeping them on a device which your former spouse or partner cannot access. If you have concerns that your former spouse or partner may try to hide details of their financial circumstances then you should consider making copies of their documentation as well. You should not remove their original documentation and not return those documents to them.

Investigate your Child Support Options

If you have children with your former spouse or partner you may wish to contact the Child Support Agency to obtain an assessment by them as to the likely amount of child support that would be payable by your former spouse or partner. Upon finding out the likely benefits payable you can then determine whether you wish to negotiate a private agreement with your former spouse or partner or make an application to the Child Support Agency to enforce any assessment of moneys payable.

At Bateman Battersby we have a number of experienced Lawyers who specialise in Family Law and De Facto matters. If you need help or advice or if you wish to discuss any of the matters addressed above, please feel free to contact Oliver Hagen or Ken Gray on (02) 4731 5899 or email us at familylaw@batemanbattersby.com.au.