

# Domestic Violence and Debt



This fact sheet summarises the Ask LOIS webinar on this topic, presented by Karen Cox, Principal Solicitor, Financial Rights Legal Centre on 12 May 2015. This webinar can be viewed for free at [www.asklois.org.au/webinars/past-webinars](http://www.asklois.org.au/webinars/past-webinars).

This fact sheet covers:

- What is sexually transmitted debt and financial abuse?
- Can a woman untangle herself from sexually transmitted debts?
- Practical tips for women
- Explaining bankruptcy

## Financial Rights Legal Centre

- Free advice and advocacy for consumers in financial stress
- Credit & Debt Hotline: 1800 007 007
- Insurance Law Service: 1300 663 464
- See [www.financialrights.org.au](http://www.financialrights.org.au) for resources and training

## What is Sexually Transmitted Debt (STD)?

Sexually transmitted debt is where a person (often a woman) becomes liable for a debt because of her relationship with another person (often a man) rather than because she personally benefitted from the loan (or other contract).

## What is financial abuse?

Financial abuse is where one person unreasonably restricts the ability of another to have control of their own financial situation. For example:

- Restricting the person's access to their own income (or family income in appropriate circumstances),
- Unreasonably directing and/or policing the person's expenditure (rather than negotiating joint compromises over differing priorities and interests) and/or
- Compelling the person to sign contracts with financial consequences

Against their will.

## Some important terms

**Co-borrower** (joint loans) – jointly and severally liable, you are responsible for the entire debt, including interest, default fees, enforcement etc, if the other person does not pay (NOT HALF).

**Guarantor** – you are responsible for the entire debt if the principal borrower(s) do not pay, including interest, default fees, enforcement etc. or the amount up to the guarantee if limited. For larger loans you will have to provide security, for example, over your home.

- Lenders want guarantees when they are not confident the person can or will pay or they don't have enough security to cover the loan.
- Guarantors have no ownership rights in relation to property/goods purchased with the loan they guarantee.

**Small business** – personal guarantees, directors are also personally liable when businesses are caught trading insolvent.



**Credit report** – Privacy laws allow lenders to provide information to credit reporting agencies about your borrowing history. This then affects your ability to borrow money in the future.

**Consumer lease** – usually a very expensive loan dressed up as a rental agreement (computers, washing machines, game consoles etc).

#### Can a woman can untangle herself from sexually transmitted debts?

- Sometimes!
- A woman is not automatically liable for her partner's debts (whether they are married or not).
- However, if she has signed a contract as a co-borrower or guarantor, or was a director or partner in a small business, or as the recipient of a service (such as Foxtel), she may become liable for a debt.
- If she has signed, there may be a way out:
  - If the lender/service provider knew of or facilitated duress (threats or force used by the partner to make her sign) or undue influence?
  - If there is another legal defence
  - Compassionate release

#### Other legal defences?

- Unjust contract
- Unsuitable loan (responsible lending)
- Signed up as a co-borrower where really a guarantor
- Statute of limitations
- Other breach of law

**CASE STUDY:** *Our client was a recent migrant from Africa. She entered a de facto relationship two years after her arrival. Her partner wanted a car but could not afford to buy one. He took our client to a car yard. A "helpful" car salesman then accompanied them to the bank to apply for a loan. Our client had no licence & understood very little of the conversation going on around her. She was asked to sign for the loan because her partner was not a permanent resident. The bank officer was present for & knew the car was not for our client, & that her involvement (and probably her understanding) was minimal. She was presented with a cheque for \$17,000 which was promptly plucked out of her hand by the car salesman.*

**CASE STUDY:** *A young mother from rural NSW has 3 children ranging in age from 7 to 11, all of whom have special needs and learning difficulties. In 2002 she received a sum of money from a successful medical negligence claim. She purchased a modest property for \$200,000. The remainder went to the solicitors, to repay Centrelink and to relatives who had supported her previously. Due to her payout she was on a Centrelink exclusion from 2007 until 2012. Her partner, and the father of her children, intimidated her to get a bank mortgage. The initial mortgage was \$25,000 but it was later increased in a number of "top ups" over a 6 month period to \$160,000 (despite our client having no income apart from Family Tax Benefit). The money was spent exclusively by her partner, who subsequently lost his job, moved into the shed and never paid anything towards the mortgage. The young woman then received a default notice.*

#### External Dispute Resolution

- Free to the consumer/borrower
- No need to appear in court – paper based
- Community lawyers can help
- Complaints can be lodged online
- If relevant, complaints can be made to:
  - Financial Services Ombudsman

- Credit and Investments Ombudsman
- Telecommunications Industry Ombudsman
- Energy and Water Ombudsman



### Credit reports

Sexually transmitted debt can affect a woman's ability to obtain credit or access to contracts (like telecommunications) in the future.

Settlements should include the removal of default listings from her credit report where appropriate.

**CASE STUDY:** *Our client was working casually about 3 days per week & wasn't entitled to Centrelink due to her visa status. Her partner falsified her payslips to make it look like she was working full time & applied for two consumer leases in her name. We did not challenge the contracts because of her knowledge of the falsification (even though the violence gave her few choices). However, the company agreed to release her on compassionate grounds & allowed her to keep an iPad, being the only one of the leased item in her personal possession.*

**CASE STUDY:** *Our client was pregnant & relied entirely on Centrelink. Her partner obtained a laptop, phone, Playstation & games all on consumer lease contracts in her name. All of these items were abandoned when she fled. The company agreed to release her & gave her a partial refund in recognition of the fact that they had failed to stop a direct debit against her bank account when she requested them to do so.*

### Practical tips for women to protect themselves

- Don't sign anything you don't understand.
- Don't enter a loan if you will not be receiving a direct benefit (such as part ownership of the car, house or goods).
- Make sure you can afford the repayments on any contract you enter.
- Get advice before you sign a contract if possible.
- Do not put yourself in personal danger. If you have signed something because you were afraid, get legal advice as soon as possible afterwards.

### Practical tips for women to untangle themselves after a break up

- Get copies of statements and notices
- Sort out repayment responsibilities & priorities
- Get advice-
  - Hardship
  - Liability (can she get out of a debt)
- Stop direct debits where necessary
- Cut of accounts in her name (or both) she is not using (even if he is) eg. Electricity, phone, Foxtel
- Joint accounts (two to sign or withdraw funds)
- Freeze access to redraw/offset
- Stop additional credit cards
- Get tenancy advice
- Getting him to refinance debts (if possible)
- Get advice about a property settlement (of there is property such as a house, or superannuation)



## Bankruptcy (Hers)

A woman should consider bankruptcy when:

- She can't afford to repay all her debts now or in the foreseeable future; and
- She has tried unsuccessfully to dispute those debts, get released from them, or has had advice that this is unlikely to be successful, or would not make enough of a difference to the overall situation; and
- She has no assets to sell or other means of addressing her financial situation (such as insurance, compensation claims etc.)

However, bankruptcy has many consequences including:

- Any property or other assets being taken (including the family home in most cases)
- Potential contributions required from income
- Impacts on future borrowing and contracting
- Impacts on employment in some circumstances
- Impacts on assets, funds acquired in the future (while bankrupt)

Get detailed advice from a financial counsellor!

## Bankruptcy (His)

A property settlement can still be obtained after one of the parties to a relationship has become a bankrupt. It is still probably better to do it first if possible.

There are time limits for property settlements, so always refer your clients for legal advice!

If a woman finds out her partner is bankrupt, she needs to get legal advice if they own joint property or have joint debts. She may have a number of options if there is property:

- A property settlement under the Family Law Act
- A negotiated arrangement (based on family law)
- Disputing the amount of equity there is in the property (this may be a temporary solution only)
- Disputing the size of her share on other grounds.
- The sooner the matter can be settled with the trustee in bankruptcy the better.

If there are joint loans, or she is a guarantor, she will immediately become liable for the entire amount of the debt which remains unpaid, including any interest and enforcement charges.

Again, if she cannot pay, or thinks she may have a defence, she should get advice about liability and hardship.

## Resources

- [www.financialrights.org.au](http://www.financialrights.org.au) – fact sheets and sample letters or call for advice on 1800 007 007 or for referral to a free financial counsellor
- [www.moneysmart.org.au](http://www.moneysmart.org.au) – fact sheets and useful information
- Financial Ombudsman Service: [www.fos.org.au](http://www.fos.org.au) – to get information about dispute resolutions or lodge a complaint online. Alternatively call 1300 78 08 08
- Credit and Investments Ombudsman Service: [www.cio.org.au](http://www.cio.org.au) - to get information about dispute resolutions or lodge a complaint online. Alternatively call 1800 138 422