



Domestic Violence NSW

RELATIONSHIP DEBT FACTSHEET AND INFORMATION FOR YOU

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HOW DO I PROTECT MYSELF FROM RELATIONSHIP DEBT?

‘Sexually transmitted debt’, or ‘relationship debt’, occurs when you become responsible for your partner’s debts. It can happen without you understanding the consequences of accepting the debt or the amount owed and, sometimes, without you even being aware of the debt.

While sexually transmitted debt or relationship debt can take many forms, it is often incurred because of emotional pressure from a partner or spouse, and not because you received a financial or other benefit.

If you owe money, you are known as a ‘debtor’ and the person or organisation who you owe money to is known as the ‘creditor’

COMMON FORMS OF RELATIONSHIP DEBT

The most common forms of relationship debt are signing a guarantee or acting as a co-borrower for a loan obtained by your partner or spouse. It is important to understand your rights and obligations in each of these situations. In signing on to another’s debts, *you may become responsible for paying the entire amount* owed by the borrower.

Before you sign a guarantee or joint loan, make sure you understand your rights and obligations and seek financial or legal advice. This factsheet is designed to help you understand the language and law around relationship debt.

I HAVE SIGNED ON AS A GUARANTOR TO MY PARTNER’S DEBTS - WHAT AM I RESPONSIBLE FOR?

A guarantee is a promise to repay a loan if the borrower does not pay. A creditor is a person or company that has made the loan.

If a creditor doubts a borrower’s ability to make repayments, they may not agree to give the loan unless another person becomes a ‘guarantor’. A guarantor is someone who promises to pay off the debt if the borrower does not meet the repayments or otherwise defaults on the loan.

In most cases, a guarantor will be liable for the entire amount owing by the borrower, plus interest and fees. A guarantor will have to repay the loan amount even if they never benefited from the loan. Often, the creditor can ask the guarantor to pay without chasing payment from the borrower.

Before signing a guarantee, it is very important you understand what you are signing. Read everything carefully yourself and seek independent financial or legal advice.

What’s in it for you?

You do not get anything out of a guarantee.

You do NOT get:

- Rights to any goods or property purchased with the loan.
- A positive credit record if the loan is repaid.

You DO get:

- Liability for the entire debt if the borrower does not pay.
- Greater difficulty in securing your own loans.

HOW DO I PROTECT MYSELF FROM RELATIONSHIP DEBT?

I HAVE BEEN ASKED TO SIGN ON AS A CO-BORROWER - WHAT WILL I HAVE TO PAY?

Acting as a co-borrower means taking on a joint loan with someone else where each of you will owe the whole amount of the loan. In signing on as a co-borrower, *you can be made to repay the entire amount owing alone.*

Myths and facts about co-borrowing

I only owe half of the loan

Wrong!

In signing on as a co-borrower, you agree to pay back 100% of the loan. The creditor can choose to collect all the money they are owed from you.

I don't have the property the loan bought, I can't be made to pay

Wrong!

It does not matter if you do not have the goods or property purchased with the money from the loan. If you are a co-borrower then the creditor can make you pay.

The other borrower will be forced to pay first

Wrong!

The creditor can choose who to recover the debt from. If the other borrower is unable to pay or cannot be found, the creditor will choose you.

If my name is on the loan, I must get something out of it

Wrong!

A co-borrower does not receive any rights to own the property bought with the loan. As a co-borrower, you will not necessarily receive a better credit record if the loan is paid off.

I have split from my partner so they will have to pay themselves

Wrong!

Even if you are no longer together, you continue to be liable for your ex-partner's debts. If your relationship breaks down you should seek legal and financial advice on how best to deal with joint debts.

My co-borrower and I agreed that they will repay the loan. So I can't be made to.

Wrong!

Personal agreements between co-borrowers will not prevent the creditor from recovering the debt from you personally. An agreement will only allow you to recover from the other co-borrower if you can find them and if they are able to pay.

HOW DO I PROTECT MYSELF FROM RELATIONSHIP DEBT?

OTHER COMMON FORMS OF RELATIONSHIP DEBT

Utility bills

If you live with your partner, these are a joint expense. But if these services are in your name only, then you could be left to repay the debt on your own. *If you are unable to pay your utility bills it is important you speak to the utility company as soon as possible as they may be able to arrange a more affordable repayment plan.*

Phone and internet bills

When you enter into a joint phone or internet contract or have your partner's contract put under your name, you will be liable to repay any amounts owing. *If you are concerned about phone or internet bills, consider using pre-paid services or have separate phones and plans.*

Joint bank accounts with redraw or overdraft facilities

In most loans with redraw facilities, a co-borrower can withdraw available funds without the consent of the other borrower. Some bank accounts, particularly those linked to debit cards, have overdraft facilities that allow you to withdraw more money than you have in your account. *If you are opening a joint bank account, ask the bank to require both signatures to access the redraw or overdraft funds.*

Having an additional card holder on your credit card account

An additional card holder is someone authorised to use your credit account and who has a separate card linked to your account. *As the primary or first card holder you will be responsible for all charges to the account, even if they are made by the other person.*

Hire-purchase and lease agreements

Hire-purchase or lease agreements are often used to purchase expensive goods such as TVs and other household appliances or cars. Under these agreements, you take the goods home but the creditor remains the legal owner of the goods until

you have repaid the amount owing under the agreement. *If the agreement is in your name, you will be liable for paying off any amounts owing even if you don't have the goods in your possession. Interest charges for these types of agreements can be very expensive.*

HOW WILL IT AFFECT ME?

Being forced to repay debt may seriously affect your financial position. If you do not pay, the creditor may commence legal proceedings against you to recover any money that is owed. *You could also lose assets such as your home or car if you have offered those assets as security for the loan.*

Becoming a guarantor or entering into a joint debt can also give you a lower credit rating if the loan is not repaid. This can make it much harder for you to take out your own loans in the future.

CAN I GET OUT OF BEING A GUARANTOR OR A CO-BORROWER OR DEBTOR IF MY RELATIONSHIP HAS ENDED?

It is very difficult to get out of being a guarantor or a co-borrower or debtor. Seek legal advice if:

- you did not sign the relevant documents;
- you did not understand the documents you were signing;
- you think the contract contains unfair terms;
- you suffer from a disability or mental illness;
- you only agreed to sign because you were pressured or afraid;
- you think the creditor or your partner intentionally tried to mislead or trick you;
- you feel that you are disadvantaged because of your age, disability, illness, poverty, inexperience or lack of education and the creditor or your partner took advantage of that; or
- it is more than six years since a payment was due, since you or your partner made a payment, or since you or your partner acknowledged the debt in writing.

HOW DO I PROTECT MYSELF FROM RELATIONSHIP DEBT?

TO AVOID RELATIONSHIP DEBT:

- make sure joint assets, such as a house or car, are in both your name and your partner's name;
- maintain your own bank accounts and credit cards rather than having joint accounts;
- don't agree to have bills (such as utilities and phones) in your name alone if your partner or spouse also uses those services; and
- avoid becoming a guarantor or co-borrower.

You should check that the person or company lending you money is authorised to do so. If you are worried about where the money is coming from, you can call ASIC's Infoline on 1300 300 630.

If you decide to become a guarantor or co-borrower for your partner, there are steps you should take to keep you and your assets safe.

Steps to take before becoming a guarantor or co-borrower

Always ask to see the loan contract

If you are guaranteeing a personal or home loan or other type of financial agreement, ask the creditor for:

- an information statement on guarantees;
- a copy of the loan contract;
- a copy of the guarantee; and
- time to read over all the documents before you sign.

If you are becoming a co-borrower, ask the creditor for:

- a copy of the loan contract; and
- time to read over it before you sign.

Find out what type of loan you are obtaining or what type of guarantee you are giving

Look out for the words **all monies**, **overdraft** and **line of credit** in a loan contract, or the words **all monies** or **indemnity** in a guarantee contract. This could mean you are liable for an unlimited amount of money. If possible, only agree to a loan or guarantee a fixed amount.

Find out if your assets are at risk

For large loans, the creditor may ask you to put your property or other assets up as security (eg, your home or your car). This means that you will lose those assets if you or your partner cannot keep up with repayments. Avoid signing loan contracts or guarantees if they put your assets at risk.

Find out about the repayments

The repayment amounts should be stated in the loan contract. Where the loan has a 'floating' interest rate, the repayment amount may change at any time. Make sure both you and your partner can afford the repayments. You should not agree to the loan if you and your partner cannot afford the repayments, or if making the repayments will put you or your partner under financial stress. Be careful about agreeing to decrease the repayment amounts as it could increase the total amount of interest you pay and the time it takes to pay off the debt.

Get advice

You should seek independent financial or legal advice before signing any guarantee or contract to become a co-borrower.

HOW DO I PROTECT MYSELF FROM RELATIONSHIP DEBT?

PROTECT YOUR FINANCIAL POSITION

If you and your partner separate, there are steps you can take to protect your financial position. These include closing joint bank accounts (especially if they have redraw or overdraft facilities), opening your own separate bank account (if you don't already have one) and cancelling any credit cards your partner has that are linked to you. For further information about these issues, see the DVNSW 'Financial Abuse' Factsheet.

Despite your separation, you will still be responsible for your joint loans and any guarantees you have given. If you are unsure about whether you have a joint loan or are a guarantor, try and gather as much information as possible about your finances. If you know who the creditor is, contact them directly for details. This will help you plan your finances so that, if the creditor seeks payment from you, you can either make the payments or take steps to get out of the loan or guarantee.

How do I find out if I have a joint loan or I am a guarantor?

Check your records. You will need to find out the name of the bank or other organisation that lent you or your ex-partner money.

Check your paperwork

Go through any paperwork you have and see if it mentions loans, mortgages, redraw facilities, overdraft facilities, lines of credit or guarantees. If it does, it may have the name of the creditor, an account number or reference number and contact details.

Check your bank statements and see if there are any transactions that might be repayments for debts. Contact your usual bank to ask about this. A financial counsellor can assist you with this. If you find the name of the creditor on the statement, look for their contact details online.

Get a copy of your credit report

A credit report usually contains information about current loans and guarantees you have in your name. The creditor's name (but not their contact details) might be in the report. You can get free copies of your credit report from agencies such as:

- Veda 1300 762 207 www.veda.com.au
- Check Your Credit 1300 734 806 checkyourcredit.com.au

How do I get copies of my loan documents?

Contact the creditor and ask for copies of your loan documents. These will help you work out how much is owing, and on what terms.

Creditors are required by law to provide copies of your loan documents for most personal loans, usually within 14-30 days (depending on the type of loan contract and when you signed). Creditors charge a fee for providing these documents.

You don't have to tell them why you want the documents and you should not admit to them that you owe them money.

Speak to a financial counsellor before contacting the creditor.

HOW DO I PROTECT MYSELF FROM RELATIONSHIP DEBT?

KNOW YOUR OPTIONS

If a creditor is seeking payment from you, you should get legal and financial advice to discuss the options available to you. If you do nothing the creditor may take legal action against you.

Dealing with commonly transmitted forms of debt

It is a good idea to begin dealing with your debts by trying to negotiate with the creditor. General information about how to negotiate debt repayments can be found by contacting the Credit & Debt Hotline on 1800 007 007. For information on specific types of debt, contact one of the services listed below.

Dealing with commonly transmitted forms of debt

Type of debt	Help available	Contact details
Utility bills		
If you are unable to meet your utility payments you may be eligible to apply for a government assistance voucher to help repay your bills. For more information about utility vouchers, contact EAPA.	Energy Accounts Payment Assistance (EAPA)	www.ewon.com.au or call 1800 246 545
If you have a dispute about the bill or payment difficulties and cannot resolve the issue directly with the utility provider, you can also apply to EWON for assistance.	The Energy and Water Ombudsman NSW (EWON)	Call 13 77 88
Phone and internet bills		
Telecommunications companies must consider reasonable repayment arrangements for people in financial hardship. If you believe you are in financial hardship, it is a good idea to inform the company when negotiating your repayments. If you have a dispute with your telecommunications company, you may be able to apply to TIO for assistance.	Telecommunications Industry Ombudsman (TIO)	www.tio.com.au or call 1800 062 058
Debts with credit card providers and financial institutions		
If you plan on negotiating a repayment plan, consider asking for a small period without interest to get back on top of your payments. If you have a dispute with your credit card provider or financial institution, you may be able to apply to FOS or COSL for assistance.	Financial Ombudsman Service (FOS) Credit Ombudsman Service Ltd (COSL)	www.fos.org.au www.cosl.com.au or call 1300 780 808
Hire-purchase and lease agreements		
If you cancel the hire-purchase or lease agreement, the creditor will probably repossess the goods and you may be charged a substantial exit fee for cancelling the agreement early. To discuss the options available to you, contact NSW Fair Trading.	NSW Fair Trading	Call 13 32 20

HOW DO I PROTECT MYSELF FROM RELATIONSHIP DEBT?

DEALING WITH CREDITORS – LOANS AND GUARANTEES

Negotiate with the creditor

Either you or your financial counsellor can speak to the creditor and ask them to:

- reduce your repayments (although this may mean you are making repayments for a longer period of time);
- pause repayments for a short period; or
- give you a discount on the full amount owing if you can make a lump sum payment for part of the debt.

If the creditor agrees to the changes, make sure you get them to put it in writing.

Hardship variation

If you have already contacted the creditor and they are refusing to negotiate, you can still apply for a hardship variation for most personal loans. You can apply to have your repayments reduced or postponed, but you will still be liable for the whole debt.

How do I apply for a hardship variation?

Send a letter to the internal dispute resolution contact for the creditor. You can get their contact details by calling the Financial Ombudsman Service on 1300 780 808 or checking www.fos.org.au. A financial counsellor or lawyer can help you with your hardship application.

What should I include in the letter to the creditor?

Apart from your contact details, your letter should state:

- that you are making a hardship application under section 72 of the National Credit Code;
- the reason that you are unable to make your repayments, such as unemployment or illness;

- the specific changes you are requesting be made to your contract (ie, repayments reduced by a certain amount or postponed for a certain period); and
- a promise to repay the debt if these changes are made.

How will the creditor respond?

The creditor has 21 days to ask for further information in relation to your hardship application such as proof of your current income, expenses or circumstances. You do not have to give information that is irrelevant to your financial position. Once you supply the information, they have 21 days to respond in writing stating either that they agree to the change you have requested, or that they refuse your hardship application.

What if they refuse my application?

If the creditor refuses your application, it is possible to apply to the court to have your repayment schedule varied. The court will only vary your agreement if it is appropriate in the circumstances. You should seek legal advice before applying to the court.

HOW DO I PROTECT MYSELF FROM RELATIONSHIP DEBT?

RESPONDING TO A LETTER OF DEMAND

A letter of demand is a letter from someone who is claiming money from you, demanding it to be repaid by a certain date. If you are unsure whether you owe the money or think the amount is not correct, you should write to the sender and ask for a detailed statement of the money owed.

Letters of demand may come from a lawyer, debt collection agency or another person who is entitled to collect the debt rather than the person or company that the money was originally owed to.

Negotiation

If you have not already done so, you should try the steps listed on page 8 of this factsheet. You can still apply for a **hardship variation** even if the creditor is chasing you for the debt.

Remember, if you are negotiating a repayment plan, only agree to one you are confident you will be able to meet.

External Dispute Resolution

If negotiations with the creditor are not successful, you may be able to resolve your dispute through External Dispute Resolution (EDR). EDR schemes are a free service to help people with disputes without going to court. EDR schemes apply to banks, consumer credit providers, energy and water providers and other similar institutions. If your debt relates to an industry with its own EDR scheme, you can lodge a complaint and resolve the dispute out of court (see 'Help Available' table on page 7).

If you choose to use EDR before going to court, any court action is stopped while you go through the EDR process. It is a good idea to **consider EDR before going to court.**

If you need advice on whether EDR or other alternatives to court are right for you, call Law Access NSW on 1300 888 529 or seek advice from one of the services listed at the end of this factsheet.

IF THE MATTER GOES TO COURT

The creditor can start court proceedings against you to recover the debt by filing a statement of claim with the court and serving it on you. If you receive one, you must **respond within 28 days**. If you don't respond, the court may order you to pay the full amount.

IMPORTANT: if you have received a statement of claim you should seek legal advice before agreeing that you owe the debt. You may have a defence or other options available.

AFTER A COURT ORDER

A judgment against you is an order by the court that you must pay money to the creditor. The amount will usually be the debt you owe plus any filing fee, legal fees if lawyers were used, and interest if the debt is over \$1000.

If a court makes a judgment against you, the creditor has 12 years to make you pay back the debt. If you do not pay the debt in full in that time, interest will be added on top of the existing debt.

HOW DO I PROTECT MYSELF FROM RELATIONSHIP DEBT?

Even though a court had ordered you to pay a debt, you can still:

- 1) **Negotiate with the creditor to repay in instalments or to pay a smaller lump sum to finalise the debt:** Make sure you keep a record of any offers you make or any agreement you reach with the creditor.
- 2) **Ask the court for permission to pay by instalments:** If your creditor did not agree to you repaying the debt in instalments, you can still apply to the court for permission to do so. If the court makes an instalment order, the creditor will not be able to take any further action to enforce the debt as long as you stick to the agreed instalments.
- 3) **Apply to set aside the court order:** If the court entered a judgment without you being there, known as a 'default judgment', you may be able to have it set aside. You will need to provide a good reason why you did not respond to the statement of claim. If you want to apply to have a default judgment set aside, seek legal advice.

Enforcing a court order

If a judgment is made against you saying that you owe the amount the creditor is claiming, there are different ways the creditor can enforce the judgment including:

- **The creditor can ask the court to 'garnish' your wages:** The court will tell your employer or bank to give a certain amount of your wages to the creditor instead of paying it to you. You must be left with a minimum amount of money to live on (known as the "Weekly Compensation Amount"). The Weekly Compensation Amount is adjusted in April and October each year. You can check the current amount on the Local Court Website:
http://www.localcourt.justice.nsw.gov.au/Pages/Practice_procedure/garnishee_amounts.aspx
- **The creditor can ask the court to 'garnish' your bank account(s):** The court can allow the judgment debt amount to be taken straight from your bank account. If there is not enough money in your account to satisfy the judgment debt, all of the money in your account can be taken.
- **The creditor can request a writ for levy of property:** The court may order the Sheriff to take goods or items you own to repay the debt. The Sheriff cannot take bedroom or kitchen furniture or tools for a trade up to a certain value.

Creditor harassment

Even after a judgment has been entered against you, you still have rights. If you feel you are being harassed by a debt collector you should speak to a financial counsellor or seek legal advice. If you experience harassment before going to court you can add a harassment complaint to your EDR claim.

Remember: you cannot go to prison for owing money.

HOW DO I PROTECT MYSELF FROM RELATIONSHIP DEBT?

Financial Counsellors

You can call the **Credit and Debt Hotline** on **1800 007 007** to be put in touch with a financial counsellor. Financial counsellors provide a free confidential service, and can help you by:

- giving you advice on becoming a guarantor or co-borrower;
- giving you advice if you can't afford your repayments;
- giving you information on how to improve your financial situation;
- speaking to creditors on your behalf, for example, to negotiate a new repayment plan or get copies of your loan documents; and
- providing information about the debt recovery process, including harassment and bankruptcy.

HELPFUL CONTACTS

Domestic Violence Line	1800 656 463
National Sexual Assault, Domestic Family Violence Counselling Service	1800 RESPECT / 1800 737 732 www.1800respect.org.au
LawAccess	1300 888 529 www.lawaccess.nsw.gov.au
Find your local Community Legal Centre	www.clcnsw.org.au
Financial Ombudsman Service	1300 780 808
Financial Rights Legal Centre	1800 007 077 www.financialrights.org.au