



Can my Former Partner Give Away or Move our Assets Before our Property Settlement?

One of the most common concerns we hear from clients as a family lawyer is “what happens if my former partner gives away, transfers or spends out money before we finalise our property settlement?”

It is an understandable concern. Separation is often a very difficult, emotionally charged and uncertain time financially, especially when one person has historically managed the family finances or had greater access to understand the family finances.

The answer is not simply that a party is free to deal with their assets however they wish because property settlement has not yet occurred.

The Family Law Act 1975 (Cth) provides the Court with significant powers to protect property and financial interests while proceedings are ongoing. However, it is also important to understand that not every expenditure after separation will be treated as an inappropriate disposition of assets.

The circumstances in which money or property is dealt with, the reason for the transaction, the amount involved in comparison to the property pool and the effect on the parties financial position are all relevant considerations.

Recent decisions, together with significant amendments to the Family Law Act that commenced in June 2025, have changed the way the Court approaches property that has already been spent or transferred.

What if my former partner transfers money to someone else?

Concerns arise where a party transfers funds to a third party, gives an asset away, creates a questionable debt or deals with property in a way that may reduce the property available for division.

This is important when there is evidence that a party is attempting to place assets beyond the reach of the other party or the Court.

In appropriate circumstances, the Court can make injunctions that restrain a party from dealing with property.

Section 114 of the Family Law Act gives the Court power to make orders or grant injunctions in relation to property.

A recent case example is *Arbeid & Cadain* [2026] FedCFamC1F 204, where the wife sought interlocutory relief after alleging that the husband had unilaterally removed approximately \$8.2 million in liquidated investment funds from the property pool. A significant portion of those funds had been transferred into an account jointly controlled by the husband and a third party not party to the proceedings.

The husband did not simply deny the funds had been transferred; his position included an assertion that the funds had not been materially disputed but had instead been converted into loans or other choses in action. The Court found that the property pool had been partially eroded by the transfer of funds into the control of the third party. The wife sought a mandatory injunction requiring the husband to pay \$4 million back into the family trust account. The Court ultimately ordered the husband to pay \$1.5 million into the family trust account and restrained the parties from causing further deductions from that account without consent.

This demonstrates that the Court can intervene before final property settlement where there is sufficient evidence the property pool is at risk.

Read the case here: [Arbeid & Cadain case](#)

Does this mean my former partner cannot spend any money?

No.

Separation does not mean that a person's financial life comes to a stop. Life goes on, mortgage

repayments need to be paid, children need to be supported, and legal fees may need to be paid. Ordinary living expenses continue.

The Court will not regard ordinary and reasonable expenditure after separation as dissipation or wastage.

A distinction may need to be drawn between:

- Ordinary and reasonable living expense;
- Expenses incurred for the benefit of children;
- Payment of legitimate liabilities;
- Expenditure that is consistent with parties' established financial circumstances;
- Genuine business; and
- Transactions that intentionally or recklessly diminish the property pool or financial resources available to the parties.

That distinction is important. People are not expected to stop living their life while waiting for their property settlement to be finalised.

What is wastage of assets?

Historically, the Family Court has developed specific principles concerning "wastage" of assets through cases including *Kowaliw & Kowaliw* (1981) FLC 91-092.

In *Kowaliw*, the Court recognised that financial losses incurred during a relationship will ordinarily be borne by both parties, although not necessarily equally. However, an exception can arise when one party has;

1. Embarked upon a course of conduct designed to reduce or minimise the effective value of assets;
2. Acted recklessly, negligently or wantonly with assets with the overall effect of reducing or minimising their value.

This principle has applied in a range of cases involving gambling, reckless expenditure, dissipation of funds and other conduct that has significantly reduced the property available for division.

It is important to note that not every financial loss is considered as wastage.

Read the case here: [Kowaliw case](#)

Amendments to the Family Law Act in June 2025

Amendments to the Act that took effect in June 2025, introduced a requirement for the Court to consider “the effect of any material wastage, caused intentionally or recklessly” of property or financial resources when considering the parties current and future circumstances.

This also comes with another development to the Act, the traditional concept of “adding back” money that no longer exists into the property pool has changed.

This is relevant because of the Full Court’s decision in *Shinohara & Shinohara* [2005] FedCFam1A 126.

Read the case here: [Shinohara case](#)

What happens if the money has already been spend?

Following *Shinohara*, property that no longer exists cannot simply be treated as though it remains an asset available for division.

That does not mean a party can spend or transfer assets without consequences. Rather the circumstances of what happened to the money may be relevant when the Court considers the parties contributions and their current and future circumstances.

The question now becomes less about “adding the money back” and more focused on how the conduct should properly be taken into account when determining a just and equitable outcome.

What should I do if I am concerned?

If you believe your former partner is moving or dealing with assets, it is important to obtain legal advice early.

Depending on the circumstances, it may be appropriate to:

- Obtain further financial disclosure;
- Investigate specific transactions;
- Preserve evidence of parties’ financial position;
- Seek undertakings from the other party
- Negotiate arrangements to preserve assets; or
- Apply to the Court for urgent injunctive relief.

Recent developments of the cases discussed, demonstrate that the Court has significant powers to protect the property pool, while also applying a more nuanced approach to assets that may have already been dissipated.

Andersons Solicitors is here to provide advice and guidance about your legal entitlements following a relationship breakdown. Our team of family lawyers can provide assistance in determining which of the above options is best suited in your situation. Contact us on 8238 6666 or send an enquiry on our [Contact Form](#)