

Options for protecting family assets

This tip sheet is not legal advice. Most of these strategies require the involvement of a family lawyer. You should seek legal advice on whether they are useful or appropriate in your circumstances.

Where the person gambling consents to the actions, they are likely to be quicker and cheaper. Some may not be possible to effect without their consent.

Why protect assets?

- To prevent assets being used as security for loans
- To protect assets from debt collection activity resulting from gambler's debts
- To protect money from being spent or gambled

Information and Options to consider:

- Ownership – who owns what? Assets are easier to protect (but not necessarily safe) if they are in the name of the non-gambling partner, or in joint names. Check council rates notices, vehicle registration or purchase receipts if you are unsure.

Family Home

- Transfer title of real estate into non-gambler's name. This needs to be approved by the bank if there is a mortgage (usually need to show payment affordability). There are implications if the gambler becomes bankrupt. The trustee can review property transfers that have occurred in the last five years. If the gambler does not agree, a property settlement may be necessary
- Changing ownership from a joint tenancy to tenants-in-common to protect the non-gambler's share of the property. Can be any proportion (for instance, if the gambler has already used some of the equity to gamble – should be acknowledged in writing)
- Lodge a caveat on a property with Land Titles Office – ultimately you would need to prove a legitimate interest in that property

Money / assets / compensation / superannuation

- Application for a temporary order / injunction to protect the asset
- Binding financial agreements can also be an option – and alternative to property settlements through the court system

Vehicles

- Transfer registration voluntarily (or by court order) into non-gambling partner's name
- Register an interest in the vehicle with the Personal Property Securities Register

Property Settlement

- Can be arranged by consent or court order for couples who are not separating and include 'notional property' used by the gambler, or spousal maintenance
- Can be arranged by consent or court order for separating couples – as above, and include child maintenance
- Family law solicitor will consider:
 - assets at the start of co-habitation,
 - assets at separation,
 - assets now,
 - assets contributed from external sources,
 - money gambled (keep evidence / records)
 - income throughout co-habitation
 - other contributions throughout co-habitation (eg care of children)
 - future earning capacity