

PUBLICATION

I had no idea my ex was racking up debt. What happens now?

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When separating couples embark on the process to divide their property, often I am asked what happens when one of the parties has been accumulating debt in secret.

Maybe that party has a gambling addiction, or has been taken by an investment scheme, or been avoiding paying taxes, personal or corporate; whatever the case may be, that sort of activity calls into question the inherent fairness of dividing family property, and the Family Property Act sets out a process to divide property in a manner that is “just and equitable” in consideration of a subset of factors.

Although the default would be to divide property equally, imprudent investments and insidious credit-financing might be dissipation. The literal definition of dissipation is the squandering of money, energy, or resources. For purposes of the FPA, where one party dissipates property to the detriment of the other, the court may consider it in assessing how to divide property and whether equal division would be fair.

So, practically speaking, this means trying to reach a consensus in private negotiations that recognizes the dissipation and adjusts the settlement accordingly, failing which it means appealing to the decision-maker to use its discretion to unequally divide property.

Both scenarios require advancing and advocating for a position, and such an exercise involves time, effort, and cost which should be weighed against the benefits pursued. And, keep in mind, dissipation is only one factor enumerated in the FPA’s list of considerations for the division of property. There may be, and often are, other details that would impact a decision of property distribution.

For this reason and others, assessing a family property regime involves cultivating a robust financial record and crafting a multi-faceted assessment. While the process can be linear and clear, it can also be convoluted and obscure. Employing the services of a family lawyer to shepherd the matter to resolution is a critical decision for every separating couple.

For more information about Family Property Act, or if you have any questions or are in need of assistance, please reach out to our Family Law Group.