



The Australian Finance Podcast Episode Transcript

Episode: \$100k divorce?! Understanding the financial costs of separation

Release Date: 14/02/2022

Speakers: Kate Campbell & Gabrielle Canny

Duration: 33:29

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Episode transcript:

Kate:

Now given there's over 50,000 divorces each year in Australia and lawyers and psychologists are all reporting an uptick in inquiries from people thinking about separation and divorce at the moment. It's high time that I start talking about it on the podcast. So in today's episode to provide some grounded advice on this topic, I've got Gabrielle Canny, the National Legal Aid director and amica project chief, which is a pretty cool app. And we'll talk about that a little bit more in this episode. So Gabrielle, welcome onto the Australian Finance Podcast today.

Gabrielle:

Thank you very much for having me. This is a very interesting topic. And so I've got plenty to tell you.

Kate:

Yes. And from our pre-chat I know that you're are very excited and passionate about this. So I'm really excited to share what you've got to tell us and especially about such a complex topic that, I mean, I feel a bit disappointed that we've never spoken about it before on the show. So definitely well time to do it today. And deciding to separate is one of the hardest things that people can ever do and making property and financial

decisions you need to move on. It's usually viewed as a very expensive and painful process. I mean, we all see the movies with heaps of fights and arguments, and I'm sure many of us know someone, whether it's our parents, our grandparents, our aunts and uncles, who's been through this process and may have a very positive or negative experience. And I'd really like to start by defining divorce and separation and how this process usually works. And what a typical couple would do in this.

Gabrielle:

Yeah, sure. Well, I mean, for most of us, particularly with that, the first relationship, that's a long relationship, whether it be at the defacto relationship or a marriage to come to the point where you're going to separate and sometimes takes a while. Sometimes it unfortunately comes out of the blue, but most people haven't been through it before. I absolutely don't know what they don't know. And it's not a topic of conversation that people bring up willingly so that they're storing up information just in case. And so it often catches people unaware of what to do next. So for people who have married, if they decide to separate, then they'll be thinking about a divorce, but it's not just the divorce because what the divorce does is it severs the marriage, the piece of paper that you've got in relation to the marriage, but it doesn't sort out the property.

Gabrielle:

So that needs to be sorted. And if there's children as well about arrangements for children. If people haven't married, but they've been in a defacto relationship, they still have to sort out their property. And if they've been any children in relation to what's best for them, but they don't have to go through the technical divorce process because they haven't had that formality of a marriage. But the rules are pretty much the same, whether you've been married or whether you are defacto in relation to sorting out property. So that's the first place to start is pretty much the information that is available to you. And I'll tell you about where information is available, will apply if you are been married or whether you've been in a defacto relationship. And of course it applies equally for same sex marriage because since the alteration to a family law after a couple of years ago.

Kate:

Absolutely. And I might just pause on the word property because I know lawyers use property and that actually includes a lot more than just the house that you're living in right now. Doesn't it?

Gabrielle:

Absolutely. So when a couple get together, they often bring things with them. They might bring an interest in a house or some ownership of a house. They probably bring a

car, they might bring savings in the bank, they might have some shares. Crucially. They might also have superannuation. They might be young. And so they just started a superannuation account, but almost everybody has a job has superannuation. So when you look to separate, you need to see, "What did I bring into the relationship? What have we built up together as a couple and what have we now got?"

Gabrielle:

But it will include everything. It does include super and there are rules about how the super is dealt with, but for many people, that's something they think, "Oh, that's not really mine. That is mine. That's not something really for the relationship." But actually it is taken an account in the relationship. And there's lots of reasons why, so you really need to be very careful. You need to think absolutely all assets that each party has and the joint ones, and then have a look and see how to separate that.

Kate:

And so you might go in thinking, "I don't have any assets," but then realise, "Oh, I do have \$100,000 in my super," and that really needs to be taken into account.

Gabrielle:

That's right. And perhaps I should also say at this stage, we also have to take into account debt because for some relationships. And so for some people, unfortunately the debt is higher than the asset. And so debt is taken into account as well.

Kate:

Yeah. And before we dive too much into the weeds, I know that relationships come in many different forms these days, and there's different legal processes whether you are married or in a defacto relationship. Are you able to elaborate on maybe the difference there and is the process different? Because I know you mentioned the other day that you might not necessarily need to get divorced in all cases.

Gabrielle:

That's right. So you only need to get divorced in if you've actually got married. But the good thing in Australia is that the family law applies the same, basically all around Australia. There are some small differences in Western Australia because the court over there is a state based court, but it applies national law. But so it doesn't really matter where you are, where you're hearing this. In each state or territory, the law is the same. And so that's a really good thing because of course it gets confusing when laws change from state to state. So if you're married, then you need to get a divorce. And if you get a divorce, you've only got 12 months after your divorce to apply to the court for orders in relation to property settlement.

Gabrielle:

So it's not something you can just let drag on forever. You really do need to really watch timeframes. If you haven't been married, but you've been defacto, then the timeframe it doesn't run like that because there's no need for a divorce. But my recommendation is that you do get onto things quickly because it gets much more difficult to sort out property the longer it is after your separation.

Kate:

And if someone wanted to find out if they were, because it's quite clear, if you're married, you've gone through the process, you've got the certificate, but I guess some people don't always realise they're in a defacto relationship. Is there a way you can figure that out on your own? Like a website you can go to, to find the criteria?

Gabrielle:

Yeah, absolutely. And you should do that. And there are really good websites. The first place is if you can go to the family court because that website does define divorce. It defines defacto and gives you information. But there are also other really good websites, I'm involved with Legal Aid. And so I run the Legal Aid office in South Australia and we have a really good website that tells you, that defines everything. It's called the Law Handbook Online. Now that information will apply all over Australia, but so true to the other Legal Aid conditions, enormous amount of information that you can get for free online that is reliable information.

Gabrielle:

It's best to go to a source like the family court website, or go to somewhere that's really predictable, very reliable, like someone like Legal Aid that's funded through government because you don't want to get caught in a situation where perhaps you're looking for information, then have to actually pay to get that information. It is available universally. Everybody should be able to Google that. If you Google and then try to pick your website from that top ones, you should be fine.

Kate:

Yeah. It's probably something that you don't want to be googling too much on Reddit forums to find the answer. And I know you mentioned that it can be quite messy and complicated if you wait too long with that timeframe. Is there any timeframe for defacto relationships or you can just do it at your own pace?

Gabrielle:

Yeah. You should really do it within the first two years after separation. And so that's what I'm saying it's something to get done and it does get much more complicated because of course the asset changes. And so if it's a house and particularly in the current market with property prices, they might be going up, they might be changing. It gets quite a complicated conversation then about whether you value the house at the time you separated, or whether you value a house at the time that you are sorting out the property when you're dividing it up. And there's some rules around that. And so the sooner you do it, the better, and of course, for most people, once they've agreed, they're separating and they've actually probably moved out of their joint living arrangements.

Gabrielle:

They want to get on with their lives. They need that sorting out on the property so they can get on with their lives. The house may need to be sold. And so each party can then take their share and buy themselves something else. They need to separate those joint bank accounts, never keep joint bank accounts after you've separated. It's not a good thing. That's something you can do very easily close the accounts, separate the money or if there is a dispute about who's getting what out of that bank account then freeze the bank account until you can reach agreement, but don't just let them go. Because unfortunately, for some people who get very emotional and perhaps distressed in relation to separation, they might take steps in relation to easily accessible assets and make some bad decisions in relation to that.

Kate:

Yeah. If you wait too long, the money might just disappear.

Gabrielle:

Yeah. That's right.

Kate:

And given we're a finance podcast, I'd be keen to hear your thoughts on what the average cost of a divorce or property settlement is in Australia?

Gabrielle:

It's a good question. And it is something people need aware of. And I'm going to tell you soon about a product that we've produced a tool to help people in the situation. So they don't have to spend an enormous amount of money on a property settlement. But when you're getting a divorce, so that's severing the marriage. There's a fee it's around about \$1,000 that you pay to the family court, but that just severs the marriage. It doesn't sort out the property. So it is possible for people to sort it out themselves, without going to lawyers, they can get information online and they can do it. But that's usually the most

simple arrangements. If we talk about people who have a little bit more complex arrangements, perhaps their relationships been longer, there may be children. And if there is perhaps assets worth fighting over, people can spend hundreds of thousands of dollars on a property settlement using lawyers often standing up for what they think are their rights, what they think is their proper share.

Gabrielle:

Whereas in fact, they're never going to get that amount in the court. You need a bit of reality testing, and that's where information really helps. So there've been some very expensive divorces in Australia and people have spent over million dollars on a property settlement. But what you know is that's what the lawyers cost. It's not what happened after you divided the money. And so for someone perhaps who has average assets, but fought truth and nail in relation to those assets, they could spend all their equity that they were going to get in their hands on lawyers fighting for them.

Gabrielle:

I'm not being critical of lawyers because lawyers are doing their job because they act on instructions. The client might say, "I'm not settling for that. I want the whole lot, I want 100% or whatever." And the lawyer can say, "Look, I don't think you'll get that at court. We'll see how we go." But if you get good information, it's a bit like a reality test. Then you'll know what is fair and what if you can't agree with it, a court might give you.

Kate:

And I think that's can be sometimes the trouble because there's so much emotion involved in this process. And it's turns into a fight on morals and ideals rather than a fight on what the law is actually going to give you.

Gabrielle:

That's right. And thinking back, hacking back to when the family law was established, there was fault in divorce. And so there was this concept that one party had done the wrong thing, and therefore they shouldn't benefit from the separation. But of course, that went out years and years and years ago, that the court is actually not interested in whose fault the breakup is, who perhaps went off with somebody else or who was behaving badly. What they're interested in is what is a fair separation of that property?

Kate:

Okay. So there's no point raising all of those issues now.

Gabrielle:

No, there's not. I mean, it's very relevant if there are children of the relationship and who they live with, what their expenses are. It's also relevant as to where the couple finds themselves. So for example, if you had a couple that were together for, let's say, 20 years, and for whatever reason, one of the parties was the wage earner and the other was the home keeper. Then upon separation, there needs to be an adjustment for that home keeper because they don't have the income that the other party does. So for some people it's quite complex, for others, let's call it a relatively short arrangement five years let's say a relationship where people live together, they both have their jobs. They'll go on earning. Then it's just relatively simple to sort out those joint assets they built up together.

Kate:

And you mentioned those worst case scenarios where it costs hundreds of thousands, maybe a million plus for a divorce. Are there any strategies for listeners to really avoid that situation in the future?

Gabrielle:

Oh, absolutely. I mean, everybody should avoid that. I mean, you think of all the hard work that goes into building up assets and to think that you might be wasted away by paying for something that in the end, you're probably not going to get a better result than what you started with. So really the thing is get information. I'll refer you to amica.gov.au. Now that is the tool that we have created. I've been their lead in relation to that, what that is, is it's an online tool that you can have a look at, and it will give you information straight away about the rules about property settlements. It will give you information as to where there are red flags, whether you should immediately go off and get some advice. There might be for example, a power imbalance or domestic violence in a relationship.

Gabrielle:

And then that's a red flag. You really need to go off and get some good legal advice. And there are free legal advice lines that you can use. But the clever thing about amica is that once both parties decide that they would like to try and sort out dividing their property online using this tool, then they input all their information. Then the artificial intelligence takes into account that information that has been provided, it also takes into account what other couples have decided with them how to split up their property in the similar situation and what a court would say and then tells the parties, how the court would decide this for them.

Gabrielle:

Would it be a 60/40 split? Will it be a 50/50 split? It's then up to the individuals to decide whether they want to accept that recommendation and proceed to produce a written document that's legally enforceable or whether they think, "Oh, no, I think something's gone wrong here. Or our situation is different." But it's a true reality checker because it will be unusual unless the information input, it is incorrect, be unusual for our party then to go to court and get a different result.

Kate:

And that's a really great way to find if everyone's being truthful about the information, get an initial indication of what that would look like. And I know everyone likes to get as much information as they can before speaking to the professionals, because it can be really scary and have tools like that is fantastic. Even using artificial intelligence to really improve that information.

Gabrielle:

It's really clever. And it's really what it should be. Because as we know, there's lots of information online, we all know you can access the law, the legislation online. So why shouldn't we then be able to combine that information and be able to give this indication of what's going to happen if you do, to end up in court without being able to agree. But over 6,000 couples have used it over the last year since we've launched it. And the tool includes a quality assurance in that a lawyer looks at every recommendation before the parties receive it to make sure that AI's not going wrong, not going off on [inaudible 00:16:36] their own and it's working incredibly well.

Gabrielle:

So the quality assurance is there. People can use it right through to get court orders or they can just use it for what was we call an agreement, a property agreement. And then they can use that to go to the bank and say, "Look, this is what we've agreed. We now need to sell the house or we need to do this. Or one is going to buy the other one out." All those arrangements can be put into it. So that's amica.gov.au.

Kate:

And I take it amica is a lot more affordable than getting lots of legal advice and going to court?

Gabrielle:

Absolutely. Yes. For people who just want information completely free. There's no question about that. So they get lots and lots of information. If they want to produce an agreement, print out an agreement, whether it's an informal agreement or one that's called a consent order, which is possibly filed a court, then it depends. If it's just

property, it's about \$300. And if there's children involved, you might come up to \$500, but that's for the agreement. So that cost is split between the parties. So it's an incredibly economic way of reaching an agreement and getting some, a legally enforceable document.

Kate:

Yeah. Amazing. And are there any other between going to court and using amica, you think you need to maybe discuss this through with an individual? Are there any other avenues like mediation that people can use to go through this process?

Gabrielle:

Absolutely. In family law, there's very strong emphasis is on mediation, dispute resolution, whether you do it online dispute resolution, or whether you do it face to face dispute resolution. In fact, in relation to children's issues, you can't go to court unless you've done mediation. And then very recently the family court has also been introducing a very strong incentive for anybody who wants to go to court in relation to property issues that they must also be referred to mediation. So mediation will be on the pathway for a couple that agree. But even earlier than that, what you can use amica for, and there are other products on the market that link to legal firms. And so what they do is they get you to organise yourself before you go to see the lawyer. So it's a bit like what I call a brief, you put together all the relevant documents that you're going to need and information you're going to need when you see the lawyer.

Gabrielle:

What that will do is shorten the time you need to spend with the lawyer, therefore the cost, because it's all done on an hourly rate. And so amica will really help you with that. They'll say, "You need the details of the house, get the valuation, you'll need your bank accounts, get a copy of your bank accounts, and enrol in superannuation, get an indication of what the super's worth." And so you build up all your paperwork and so that if you do need to, and many couples will need to get professional legal advice because their situation is more complex than normal. Then it really helps to be able to produce that at the first meeting with the lawyers, so that you're many hours and hours just providing those instructions.

Kate:

And given most of us wouldn't have faced this situation before it does help actually having something guiding you and saying, "You need these documents, you need this information," because I've always, you're just rocking up and going help. And as you said, that is a very expensive way to do it.

Gabrielle:

It is. Yeah, that's right. And I always think now there's just so much good information available through the internet. Just make sure that, did you use it to prepare yourself for a situation? And even in other areas of law even for example, if you had a debt and you wanted to go through a magistrates court, if you needed to go through a magistrates court proceedings, go to the website, find out first because you're so much better on then you understand so much better about the situation you're falling into.

Kate:

Yeah. And when it comes to using these platforms, what are some of the common roadblocks or challenges that help people in their track when they're trying to reach an agreement?

Gabrielle:

Well, often it comes down to the complexity of the person, or the complexity of their situation. And so you may find that sometimes with a marriage breakup or relationship breakup, that one party is perhaps ready to move on before the other party. And so one will say, "Look, I'm ready to sort out our property," and the other one's pats a bit reluctant. Maybe they think that there's a chance that there might be a reconciliation. Maybe they're just hoping that things will get better. And so what we find is that many times that people are, they go onto amica, one side will go onto amica, get all the really good information and then think actually, "I think we can do this." And so then they send electronically an invitation to the other party to say, "Will we do this? Will we use this tool to do this?"

Gabrielle:

And the other party doesn't respond. And usually we find it's because they're just not psychologically ready to do it. But in other times, it's the complexity of the situation. If, for example, one of the couple, for example, might have received money through a bequest through a will, and that's going to complicate the situation. If, for example, they've received that money very recently into the relationship and if the split up, it probably will be completely ignored in the sense that there will be no allocation to the other party. But if, for example, it been 10 years and the money had been tipped into the family finances and it was all merged now, that's quite a complicated thing to try and sort out. If for example, the couple ran a business together that's complicated, that needs some sort of good advice. And so it's either the complexity of the person or the complexity of the situation.

Kate:

And that's the situation where you'd probably actually need to see someone and get assistance with that. I can imagine it might be difficult if one party is coming to the table and one party isn't, using one of these free tools might not be the right thing to do at that time.

Gabrielle:

But also what you might find is that some parties might go off and get some really good advice from some lawyers. And then they I say, "We get it now. All right. I think we can go back and use the tool now because we're both on the same page," their readiness to do it.

Kate:

And I wanted to talk a little bit more about superannuation and how this plays into divorces and separations. What should we be aware of with regards to our super?

Gabrielle:

I think that for younger people, for people in relationships where both parties got super, that's a fairly standard thing because they would be building up their super balances as time goes on. But for people who for whatever reason, haven't been in super, whether they haven't had a job, maybe they've studied for a long time and the other party has got super and that's worth quite a bit. Then when the relationship breaks down, it may be that one party will be compensated through the other party's super. But as we know about super it's a future entitlement, it's not something that you can access without special provisions. It's not mean you can access like money in the bank because it's for the future. And so what sometimes needs to happen is they need to do what they call super splitting. But that might involve, how do I describe this?

Gabrielle:

It might involve a calculation, such that one side, one of the parties is going to get 100,000 and the other side let's say, each of them will end up with effectively 100,000 each. But someone will keep all their super and only get 20,000 in cash because they're allocated their share to the other party through another asset because you can't actually pull it out of super. There are very strict rules about when you can actually access super and a marriage breakdown or a relationship split up isn't one of those situations. But of course, if parties are close to retirement, then you can, or if they've actually started accessing the super, then you can split it because there's a lot of money sitting in those super accounts where people have been earning for many years.

Gabrielle:

And it may be, if as I said, you had what might have been a traditional relationship for older couples, the wife never had a job. The wife, for example was rearing the kids, running things at home. Then the amount that's being built up in the husband's account will have to be shared to the wife one way or another. But it's complex. It is complex, easy when as I said, each party early in the relationship, everyone's pretty young, their balances are about the same. And then you agree, I keep mind you keep yours. It's when the balances aren't the same, long relationship that you really need to get some good advice.

Kate:

Yeah. You can understand the longer the relationship goes on and the more the assets change and grow and develop the more potentially complicated the situation can get.

Gabrielle:

Yeah, that's right.

Kate:

Are there any other strategies you want to share with our listeners when it comes to separation and divorce and making sure they can do it in the most calm and cost effective matter possible?

Gabrielle:

I think the main advice is to try to keep emotion out of it, try to get to the stage where you're accepting that the separation is happening and that you will be now moving on with your life and that a property can't be used to penalise the other party. That's just not the way it works. But also I have to repeat that if there are any children of the relationship, that will influence the decision in relation to the property, because of course the children need a place to live depending upon what being agreed in relation to contact and who they live with. It may be that there will be special needs in relation to those children. And so there may be sort of, well, there could be expensive school fees that need to be paid that needs to be taken into account.

Gabrielle:

Or there might be a child with a disability who will need funding longer term. And so the fact of children in the relationship does influence what happens with property. And that's why, as I say, in those early relationship with our children, much simpler, but it does get more complicated. And what the rules are is it must be fair and be in the best interest of the children. And that's almost a mantra that people should keep thinking for themselves for property. We've got to end up with a fair settlement. It's not a matter of one winning and one losing, it's about what's fair because that way people can then move on with

their lives and get the best benefit from having been in that relationship, even though it's broken down.

Kate:

And I know we wanted to chat a bit more about binding financial agreements and making arrangements for children, and we'll potentially be having a follow up episode with a family law expert to dive into that further and answer any listener questions that have risen from today's episode. But one last thing I wanted to touch on before we wrap up, I know you were speaking when we chatted earlier about how important it is to be empowered with all this information. And even if it's not for you right now, or ever, you could help a friend or a family member going through this situation, how do you recommend if we support person for someone we know going through this now or in the future, maybe best preparing ourselves so we can give them some tools to help them.

Gabrielle:

It's a really good question. And it's really good thing to talk about because unfortunately there are out in the community what I call urban myths, urban myths about divorce, urban myths about property settlements and urban myths about how defacto relationships are sorted out when they break down. And so it's very unfortunate and sometimes it can encourages incorrect perception of how something is going to finish up by sitting around the kitchen table, repeating urban myths, and actually not knowing that they're right or not. And so the best thing someone can do, who's supporting somebody else is to actually just get some information for themselves. And that's where this amica.gov.au will give enough information to be able to say, "Hang on a sec. I think you should go to this website. Or I don't think that's really right about one side gets everything on the other one gets nothing. I don't think that's quite right."

Gabrielle:

Go to the website. Also all legal aid agencies around Australia have free advice lines. Anybody can ring their free advice line, just Google your local legal aid office and they've got a free legal advice line. And so you could just ring up and say, "I'm just not sure." In fact, many years ago, my early job was on one of those advice lines. I don't have people ring me and say, "I'm just thinking about this. I don't know where the relationship's going, but I'd like to be a little bit forward. What would happen if we split up?" And you can sort of just chat through those situations, you don't even have to have, you'd be in the middle of it.

Gabrielle:

But the other thing also is to watch for people who you can see are in a powering balance or perhaps there's been some domestic violence because they are going to be

so influenced by that behaviour, that they may not be able to make good decisions for themselves. And so there are really good resources out there that will help people. And so it's watching out for somebody else, but people should intuitively know there is a resource that can help them. And if the starting point is amica.gov.au.

Kate:

Yeah, absolutely. And I think it's amazing that we have these resources and we just need to get the word out there more about amica and Legal Aid and all of the free hotline that are available, even like there's financial counsellors. I'm sure they would point you in the right direction if you were going through this and just a lot of resources out there. And if we get the word out, I think that will help people going through these situations and you'll be able to better help your friends and family as well.

Gabrielle:

That's right. Yeah.

Kate:

Wonderful. Well, Gabrielle, if anyone wants to learn more about you and amica and your work, where should they go?

Gabrielle:

Yeah. So go to amica.gov.au. The website is as I said, we've been live for over a year now. There's lots of information there and that's your best starting point.

Kate:

Wonderful. I'll make sure to share that link in our Facebook as well, because I think that's a really important one that people know about just because they can use as a reference point to share with their friends and family and just get that conversation started because as much as we don't like talking about superannuation or our finances, we probably don't want to talk about this even more. Most of us don't want to preemptively plan this conversation. So I think it's a good that we can just in our own time, have a look at that side and just make sure we've got some of the basics down pat.

Gabrielle:

And there's lots and lots of links on there. So exactly what you said about financial counsellors, about mediation, about specialist services that are needed about domestic violence, great resources, there's warnings for example, for someone, for example people who might have been divorced and they're running up to their year after they're

divorced that they need to do their property settle. There's a warning to say, "Hurry up, hang on a sec, you got to hurry up about this." And so it's a really good starting point.

Kate:

Yeah. And I noticed the amica website had an easy exit at the top. So if you don't want anyone to see that you're on the site, you can easily get it out. And I think there's-

Gabrielle:

Absolutely.

Kate:

... a lot of resources now that do that, which I think is a good improvement. Wonderful. Well, Gabrielle, thank you so much for coming on the podcast today. And hopefully we get a part two in the future to discuss this further because just sharing these resources is so important.

Gabrielle:

It's been a pleasure and I'm really pleased to be able to spread the word. And I'd like to think that in a year's time when someone's talking to a friend, they'll be able to say, "Hang on a sec. I know what you should do, check amica out."

Kate:

Wonderful. Thank you so much.

Gabrielle:

Thank you. Good. Bye-bye then.