



How is inheritance treated in a family law property settlement?

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For couples negotiating property settlement after separation, how an inheritance is treated depends on certain factors. Even then, there is still uncertainty around how an inheritance might be ultimately dealt with if your matter proceeded to final hearing in Court rather than with [consent orders or a financial agreement](#).

This is because the Judge in family property proceedings has a wide discretion, which includes deciding how best to treat an inheritance in the context of:

1. whether it should be included in the asset pool for distribution at all; and
2. if it is included in the asset pool, how it should be divided.

If an inheritance is to be included in the property settlement, consideration will also be given to what weight, if any, should be given in recognition to the party who received the inheritance.

Before we delve deeper into inheritance and property settlement, you may find some of our earlier articles useful:

- [How are assets divided after separation or divorce?](#)
- [How to negotiate a fair property settlement](#)
- [Are my future needs considered in Family Law property settlements?](#)

Determining if an inheritance forms part of the asset pool in property settlement

As noted above, inheritances might be deemed an asset of the relationship, however this is dependent on a number of factors, including when the inheritance has been received.

Inheritances can also be made up of different types of assets, including real property (like a house), cash, shares or chattels or jewelry and the value can vary significantly. If the asset pool for distribution is quite small, consideration would be given to whether it might be an unfair outcome if the inheritance is not included, particularly where it is a larger inheritance.

Ultimately, the important issues in any property settlement matter which might involve an inheritance are all the facts of the case, including:

- how long the relationship was;
- when the inheritance was received;
- the value of the inheritance; and
- what difference, including the inheritance, will make to the asset pool.

How an inheritance may be dealt with in property settlement

We explore some different types of inheritance scenarios and how the Court *might* deal with them. Keep in mind that the Court has a wide discretion, and there are not always clear-cut answers.

Inheritance received after separation

- One party received a small inheritance during the relationship, which was used for a family holiday.
- The other party received a somewhat substantial inheritance shortly after separation but before the parties had settled their property matter.
- The inheritance received after separation might not form part of the asset pool for distribution at property settlement.
- However, given one party will be substantially better off financially shortly after separation, the Court may make an adjustment to the property pool in favour of the other party for their future needs.

Inheritance used to pay down mortgage early on in a relationship

- One party received an inheritance of \$50,000 in cash in the first few years of a long relationship.
- The inheritance was applied to pay down the mortgage on the family home, which benefited the relationship.
- The parties separate after 25 years.
- The inheritance, in the form it was received (i.e. cash), therefore, no longer exists at the time of separation.
- The party who received the inheritance *may* receive some recognition as a contribution in the overall division of the assets at property settlement, given they were the one who received the inheritance, or they *may not* receive any recognition given it was so early in the relationship and many years before separation.

Inheritance used to purchase a personal asset prior to separation

- One party receives an inheritance shortly before separation, which was used to purchase a fancy motor vehicle for themselves.
- The motor vehicle would likely form part of the asset pool.
- Further, given the party who received the inheritance used it to purchase something that benefits only themselves, (unlike the above scenario where the inheritance was used to pay down the mortgage), they may not receive additional recognition when the asset pool is divided.

Inheritance bequeathed in a Will with reference to both parties

- In a scenario which occurred in a recent case before the Court, one party received an inheritance from an elderly relative. The inheritance was received close to separation after being in a long relationship.
- Reference in the Will of the Testator, however, was also made to their spouse, the other party.
- In this case, even though one of the separated parties was a relative of the deceased because both parties were referred to in the Will and it was a long relationship, they might both receive the inheritance equally.
- In this scenario, their respective inheritances would be left out of the asset pool for division.

As you can see, there are many different scenarios related to inheritance and property settlement. There is no single answer for how it will be dealt with. This is why it's important to seek legal advice at the early stages of your property settlement, particularly where there are different types of assets, like an inheritance.

Get help from a family lawyer

As mentioned above, an important thing to remember with an inheritance and all property settlement cases that proceed through the Court is that because the Courts have significant discretion when deciding how an asset pool should be divided and *what* should be included in the pool, the outcome will always be a little uncertain.

Whether negotiating your property settlement outside the Court system or your matter is proceeding to trial, the earlier you seek legal advice after separating from your partner, the better. Likewise, in the event you are contemplating a relationship and thinking about protecting your assets (for example, with a financial agreement), the sooner you organise this, the better.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.