

How is property acquired after separation but before property settlement treated?

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Clients in the midst of negotiating family law property settlements will often ask questions along the lines of:

- "If I purchase a property now, will that effect my property settlement?"
- "Can my ex make a claim against my new property?"
- "If I am saving money after separation, will that be included in my property settlement?"
- "If I receive an inheritance now, will I need to share that with my ex?"

Questions like this are understandable, especially when some property settlements can take a while to finalise. In this article, we look at how property (including real estate and other assets) acquired after separation but before final property settlement is treated in family law.

Duty of disclosure obligations

Parties negotiating or litigating their family law settlements have a duty of disclosure. This duty requires them to provide to the other party all information that is relevant to their case. This includes any and all interests in property and any financial resources. For more detailed information, you can read our earlier article "Duty of disclosure in family law".

The obligation to make disclosure of all interests in property and financial resources also extends to property acquired **after** separation but before settlement. You are not allowed to keep property and financial interests secret from your ex-spouse to avoid it impacting your case.

Is it in or out of the property pool? An assessment of contributions

To what extent property acquired after separation will impact your case depends on *how* it was acquired and what contribution, if any, your ex-spouse has made to that property.

Consider these scenarios

- If you used money in the bank that existed at separation, then that money will be considered a joint asset. Therefore, any property you purchase with that money (together with any associated debt) is likely to be considered part of the asset pool available for distribution between you and your ex-spouse.
- Where you have accrued savings after separation, you could argue that these savings be excluded from the pool of assets available for distribution between you and your ex-spouse. This position may not always be accepted by your ex-spouse and/or the Court.
- For example, if you have only been able to save those funds because your ex-spouse has been paying other expenses on your behalf (such as the mortgage repayments for the property you are residing in), your ex could argue that they have made a contribution to the accrual of those savings and that therefore, those funds should be included in your property pool.
- If, however, you purchase a new property and use only post-separation income towards that purchase, then, assuming your ex-spouse cannot point to any contribution they've made towards that purchase (directly or indirectly), you will be more likely to succeed in arguing its exclusion from the asset pool.
- If you receive an inheritance post-separation, then the question of whether and how the other party has contributed to that inheritance will be relevant to whether or not it is included in the asset pool. For more detailed information, you can read our earlier article "How is inheritance treated in a family law property settlement?"

If you're unsure how certain property you acquire post-separation will be treated in property settlement, or you feel it is being treated inappropriately, you should seek legal advice before agreeing to anything.

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If the post-separation property goes into the asset pool, does that mean my ex will get half my new house?

No. When making final property orders under the family law, the Court intends to sever the financial relationship between the parties. This principle is referred to as having a "clean break" between the parties. It means that the Court will not make orders for parties to jointly hold property on a final basis because this increases the likelihood of disputes between them later down the track.

Where the post-separation property is included in the pool, it would usually still be retained by the party who acquired it, provided that there is enough value in the remaining property/assets to fairly distribute the asset pool between the parties.

It may mean that you need to make a greater payment to your ex-spouse, or that they get a higher proportion of the remaining property than they otherwise would have. If it's not possible to fairly distribute the asset pool between the parties where one party

retains a particular piece of property, usually the Court will make orders for that property to be sold, so that a fair distribution of the sale proceeds can occur.

Property excluded from the asset pool is still relevant to overall property settlement negotiations

Even where your ex-spouse accepts that a post-separation asset should be excluded from the asset pool (or where you are successful in arguing that in Court), that property interest is still relevant to your overall settlement.

In determining how to distribute property under the family law, a Court will have regard to how each party faces the future (i.e. their "future needs"). If one party has a valuable asset or a large sum of money at their disposal, where it is not included in the pool, the Court will still consider it a financial resource and, taking this into account, may make an adjustment of the remaining asset pool in the other party's favour.

You can read more detail in our earlier article, "Are my future needs considered in Family Law property settlements?"

Summary

In most cases, the acquisition of property post-separation, whether by purchase, gift or inheritance, can complicate your family law settlement. Of course, individuals can't control when they will receive an inheritance, but if a client is intending on making a large purchase, our advice will often be to defer that until after their property settlement is finalised, if they can.

This is to avoid unnecessarily complicating their case, leading to an increase in legal costs and the time it takes to finalise their settlement. By delaying such purchases, you are avoiding:

- needing to make disclosure about the new asset;
- the possibility of requiring valuations of the new asset;
- the legal argument about whether the property should be included in the asset pool, and if not, how it should be regarded in the assessment of each party's future needs.

However, we understand that many people simply want to move on after separation and that sometimes the purchase of a nice new car or having housing security can help with that. Overall, as long as clients are aware of the complexities of how post-separation assets may be treated in their settlement and are making informed decisions about these matters, we encourage them to make their own decisions.

How a family lawyer can help negotiate a fair property settlement

How the post-separation acquisition of assets can impact your case will depend on the overall circumstances of each party's case. If you have more questions about this or want advice about how this may impact your current situation, please reach out to Emera Family Law.

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.