



## Who gets the engagement ring if we separate?

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What happens to the engagement ring when you separate prior to getting married or when you separate/divorce after marriage? It's a very common question in family law: *Who gets to keep the engagement ring?* Does the recipient get to keep it, or should it be included in the assets available for distribution between the parties (**the asset pool**)?

Generally, gifts in family law are considered to be items given to one party of the relationship or marriage with no expectation of receiving anything in return (the gift is unconditional). These gifts are not usually included within the asset pool and are instead considered to be personal possessions.

In some circumstances however, a party may seek for items that have sentimental or significant value (such as an engagement ring) to form part of the asset pool and for the value of that item to be taken into account when calculating the total assets that the party in possession of the item is to receive in any [property settlement](#).

## Who gets the engagement ring if parties separate prior to getting married?

Engagement rings are unusual in that they are conditional gifts. The engagement ring is gifted from one party to the other on the condition that the party receiving the ring agrees to marry the person gifting the ring. On that basis, the person that gifted the ring may argue that, in the event of separation, the ring should be returned and should not form part of the asset pool.

The success of this argument has weakened over time as it has become more common for parties to live together and to share finances prior to being married. In these situations, the person receiving the ring may have indirectly contributed to purchase of the ring.

In determining who should keep the ring and, whether the ring should be included in the asset pool, the following factors should be considered:

- The length of the relationship;
- The [contributions of each party](#) (including financial and non-financial contributions) and the [future needs of each party](#);
- The value of the asset pool generally (as well as the [value of the ring itself](#));
- Is the ring a family heirloom? Generally, there is an expectation that heirlooms will be returned in the event of separation;
- Which party of the relationship called off the engagement? In the 2007 case of [Papathanasopoulos v Vacopoulos](#), the Court decided that:
  - if the recipient called off the engagement, they would be required to return the ring;
  - if the person who gifted the ring called off the engagement, the recipient would be permitted to retain the ring; and
  - if the parties mutually agreed to separate and end their engagement, the ring should be returned when other gifts or items are returned.

It is important to note that the parties in this case were not considered to be in a de facto relationship and so the provisions of the [Family Law Act 1975](#) did not apply. This clear-cut contractual interpretation is more likely to be applicable where parties have not lived together before their engagement.

## Who gets the engagement ring if parties separate after marriage?

In situations where the parties are married, the factors listed above will be taken into account, however the engagement ring is more likely to form part of the asset pool when it comes to negotiating property settlement. If neither party wishes to retain the ring, the ring can be sold and the sale proceeds included in the asset pool.

## Protecting the engagement ring following separation

It is important to ensure that the engagement ring, and any other items of value, are safely secured and not disposed of between the date of separation and finalisation of any family law matters, including property settlement.

This will help prevent a situation where your former partner sells assets for less than their actual value. It will also protect you from losing or selling an asset, only to have your former partner claim that the asset, or its stated value, should still be included in the final property settlement, even though it no longer exists or was sold for less than its worth.

From a practicable perspective, it is generally easier to negotiate a final property settlement agreement when all items included in the asset pool remain in yours or your former partner's possession. If you wish to retain the engagement ring, it may also be helpful to keep this in your possession (rather than your former partner's) if you or your former partner are relocating from the family home.

## How can a family lawyer help?

The return of an engagement ring and/or whether the value of the ring should be included in the asset pool is determined on a case-by-case basis.

If you are considering separating from your partner and would like further information as to whether you are entitled to retain the ring and/or how your engagement ring is likely to be treated in a property settlement agreement, please contact our office and arrange a time to speak with one of our family law lawyers.

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*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.*