

How does inheritance effect my property settlement?

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How an inheritance is treated when it comes to a family law property settlement depends upon a range of factors. There is often uncertainty as to how an inheritance by one party will be factored into the division of assets after separation. This blog explores the various ways inheritance may be treated in property settlement negotiations, given that family law courts have significant discretion in the area.

When might an inheritance form part of the asset pool?

Generally, an inheritance is not automatically quarantined from the asset pool following the breakdown of a relationship. That is not to say, however, that an inheritance will always form part of the parties' asset pool in all circumstances. Inheritances received by one of the parties to a relationship will be considered on a case-by-case basis.

Timing of an inheritance is a key factor in property settlement

Pre-relationship

Inheritances received by a party before the start of a relationship are more likely to be treated as an 'initial contribution' by that party, much the same way as other assets each party held prior to the relationship. They will be considered a 'contribution' solely of the party who received the inheritance, except in rare circumstances.

During the relationship

Inheritances that are received during the course of a relationship may be treated differently depending upon how the money was used. For example, money that is inherited early in a relationship and used to pay for living expenses or a holiday will be hard to separate from other contributions from each party. On the other hand, a substantial sum of inheritance may have been received by one party and used as a deposit for the family home.

Some inheritances may be deemed to have been ‘contributed to’ by one party. For example, if one party has received an inheritance but it was acknowledged that they provided care services to the testator (the person from whom they received the inheritance) during their lifetime, this could impact the receipt of the inheritance in a tangible way. This, however, will only occur in rare circumstances.

At the time of separation or post-separation

Inheritances received at the time of separation or shortly thereafter will often not be regarded as having been contributed to by the party who received the inheritance and, therefore, not form part of the joint asset pool available for division.

Whilst the Court may exclude the inheritance from the asset pool, it can still take the inheritance into consideration as a financial resource of one of the parties. This means that the Court may not make an adjustment of the asset pool in favour of one party for their ‘future needs’ if they have very recently received a significant inheritance.

Courts will still maintain the discretion to treat inheritances as they deem appropriate, however, recent cases seem to suggest that including them in the asset pool will most often not be deemed just and equitable.

Other factors that can impact how an inheritance is treated

Apart from the timing of the inheritance, the following factors may impact how an inheritance will be treated when it comes to a property settlement.

The identity of the testator and relationship with the beneficiary

The relationship that the testator had with the party receiving the inheritance can be a relevant factor. For example, if the recipient is deemed to have contributed to the receipt of the inheritance, such as providing the testator with a high and consistent level of emotional and physical support over an extended period of time, this would ordinarily have an impact on how the inheritance is treated.

The intention of the testator

The testator may have intended for an inheritance to benefit not only one party but potentially a whole family. In these circumstances, an inheritance is more likely to be included in the asset pool available for division.

What can I do to protect an inheritance?

One option is to enter into a financial agreement whereby each party agrees not to make a claim against any inheritance received by the other party in the future.

A financial agreement is made under the *Family Law Act 1975* (Cth) which is effectively a contract between the parties which ousts the Family Court's jurisdiction to deal with property matters. When entering into a binding financial agreement, it is a requirement for each party to retain their own lawyer to advise them as to the advantages and disadvantages of entering into such an agreement.

How a family lawyer can help

Understanding how your inheritance may be treated when it comes to property settlement can be complex. Smith Family Law can provide you with advice relevant to your specific situation.

Contacting Smith Family Law

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