



Inheritance and family law property settlement

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E&A Lawyers has made the decision to no longer provide family law services. While we no longer take on any new family law matters, we are happy to assist by referring you to lawyers specialising in this area. Please don't hesitate to contact us if you would like a referral.

[CALL US IF YOU'D LIKE A REFERRAL TO A FAMILY LAWYER: 02 9997 2111](tel:0299972111)

Parties to family law proceedings are required to disclose any and all assets during property settlement negotiations, including inheritance. If you do not abide by the requirements of disclosure, a Court may make a costs order against you. There is also the possibility that Consent Orders previously entered into without the proper disclosure of the inheritance, could be set aside.

You can learn more about your obligations of disclosure in our article, ["What is disclosure in family law?"](#).

Does an inheritance form part of the property settlement asset pool?

Each case is unique and turns on its own facts. Ultimately, the Court has discretion as to how an inheritance will be treated during a [family law property settlement](#).

The Court will consider matters such as:

- when the inheritance was acquired;
- the value of the inheritance;
- whether the inheritance has vested;
- whether the inheritance was utilised to purchase further assets of the asset pool; and

- the size of the pool.

When an inheritance is early in a relationship or prior to a relationship

If an inheritance is acquired at the beginning of a relationship or early in the relationship, it will usually be assessed as a contribution by the person who received the inheritance. If the inheritance is still in existence as an asset at the date of separation, the inheritance will form part of the asset pool to be distributed.

The case of [Jabour & Jabour \[2019\] FamCAFC 78](#) involved a long marriage where the husband had an inheritance prior to the relationship and then rezoned properties and purchased another property.

At first instance, the judge found that distribution of the asset pool was 66% in favour of the husband. The wife appealed and at appeal, the Court determined that the husband was only entitled to 53% of the asset pool.

What happens to an inheritance acquired during a relationship?

If an inheritance is acquired during a relationship, it will form part of the asset pool to be distributed.

In [Miller & Miller \[2014\] FamCA 591](#), the husband received an inheritance a few years before the end of a decade-long marriage. The Court considered that it was acceptable for the husband's inheritance to be incorporated in the pool to be distributed.

What happens to an inheritance acquired after separation?

An inheritance acquired after separation is not automatically excluded from the asset pool to be distributed or quarantined.

The Court can [make orders for property settlement](#) and the Court retains its discretion as to how each asset is to be treated in each case. If assets are received after separation, the Court has the discretion to quarantine the inheritance from the rest of the asset pool. However, this will depend on the facts in each case.

[Call a family lawyer for help with your property settlement: 02 9997 2111](#)

Cases where inheritance was received after separation

Calvin v McTier [2017] FamCAFC 125

In this case, the husband received an inheritance post-separation but prior to property settlement.

The wife was of the view that the inheritance should form part of the asset pool to be distributed.

At first instance, the judge determined that the inheritance should form part of the asset pool. The husband appealed.

At Appeal, the Full Court of the Family Court found that, under the *Family Law Act 1975*, the Family Court has the ability to make a determination and apply discretion in the case.

However, the Full Court dismissed the husband's appeal against the property order, with costs. The Court found that there does not need to be a direct connection between the piece of property and the marriage. The definition of property would thus include all property owned by either of the parties at the date of the final hearing.

Holland & Holland [2017] FamCAFC 166

In this case, a property was inherited by the husband after the separation. The property was worth \$715,000.

At first instance, the Court determined that the post-separation inheritance should be excluded from the asset pool due to it vesting after separation. On appeal, it was overturned and included in the asset pool for distribution.

What happens if the inheritance has not come to fruition at the time of finalising property settlement?

If the inheritance has not vested, it can still be deemed a financial resource and an adjustment of the division of the asset pool can be made.

Can I protect an inheritance in the event of separation?

There are often many considerations to take into account when determining whether an inheritance forms part of an asset pool, in the event of separation.

Any inheritance received by one party generally will be considered part of the parties' asset pool and form part of the property pool which is to be divided between the parties. A Court will consider the amount of time that the parties have been separated when the inheritance is received, in assessing the parties' contributions to the asset pool.

Get help from a family lawyer

There is often a lot to consider when negotiating your property settlement. Seeking advice from an experienced family lawyer can ensure all your interests, now and in the future, are protected.

If you require any clarification about property settlement, including issues related to inheritance, contact one of our experienced family lawyers for advice and assistance.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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This article 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 E&A Lawyers.