



I made the money in our relationship so do I get more after separation?

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When separating from your partner, you may find yourself asking, "I made the money in the relationship, so why can't I keep it?" Whilst this seems like an easy question, when it comes to financial settlements in family law, the answer is not always as straightforward as it may seem.

Things like financial contributions, non-financial contributions and future needs are all considered when determining a [final property settlement](#).

The concept of marital assets

Under the law, marriage or a [de facto relationship](#) is viewed as a partnership. This means that income and assets accumulated by each party during the relationship are considered 'marital property.' This marital property can include any asset or income earned throughout the duration of the relationship, including your salary, savings, superannuation, vehicles, etc.

The court assumes that over the course of a marriage or de facto relationship, both parties contribute towards the asset pool (all the assets and liabilities considered in a property settlement), and so all assets should be split equitably, regardless of who specifically earned that asset.

In some cases, property acquired personally prior to the relationship, which amalgamates with existing marital assets, may also be considered for division. An example of this amalgamation would be if one party decided to use savings from their personal bank account to purchase a shared home.

Family law property settlement must be just and equitable

The court will not be able to make an order regarding the division of property unless it is satisfied that the order is just and equitable pursuant to section 92(2) of the *Family Law Act 1975*. The Court aims to divide financial assets equitably between both parties, and it is important to remember that this does not always mean that the assets will be divided equally. That is, the myths of a “50:50 split” or “I can’t leave because she’ll get half of everything” are incorrect.

Determining “just and equitable” in property settlement

When determining what is just and equitable, the court considers the following factors:

- each party’s financial and non-financial contributions;
- each party’s age and health;
- the length of the marriage or de facto relationship; and
- the future earning capacity of each party.

The principle of just and equitable was further highlighted in the Australian High Court case [Stanford & Stanford \(2012\) HCA 52](#).

The judgment of this case encourages the court to distribute financial assets equitably, regardless of the specific way each party has contributed to the relationship. So, whilst you may have been the primary breadwinner, it may not necessarily be equitable that you retain all the money that you have earned.

What are non-financial contributions to a relationship?

There has been an increased focus on the non-financial contributions that a party may bring to a relationship. Section 79(4)(b) of the *Family Law Act 1975* deals with any non-financial contributions that are made.

These contributions may include, but are not limited to:

- homemaker and parental contributions (e.g. one parent staying home to look after the children);
- contributions to the conservation and improvement of property; and
- contributions to your spouse’s career.

In a property settlement, the non-financial contributions of one party are just as significant as the financial contributions of the other. It is important to note that the non-financial contributions of one party may often increase the other party’s capacity to significantly contribute to the relationship in a financial means.

For example, one party's decision to give up their career and raise the children from infancy to adulthood will enable the other party to strengthen their career (and their superannuation balance) and financially contribute to the asset pool.

So, whilst on a surface level, it might seem unfair that you do not get to keep the money that you personally made throughout the relationship, you must keep in mind that your earning capacity may have been supported by your partner's non-financial contributions.

The bigger picture

Negotiating and finalising property settlement is an overwhelming process, and the final division of assets may often not seem logical or coherent, but it is important to always look at the bigger picture.

The court will never divide the asset pool in a way that is not just and equitable. So, it will be the case that despite earning the money yourself, it is not equitable for you to retain that money after separation. Try to understand the underlying factors that have allowed you to earn this money and appreciate the non-financial contributions that your partner may have made throughout the relationship that enabled you to earn the money you did.

Get help from a family lawyer

Going through separation and the inevitable need to divide the assets of the relationship can be a daunting and exhausting process. There are many factors to consider.

Engaging an experienced family lawyer will ensure you consider all the factors specifically relevant to your situation. A family lawyer can ensure you maximise your entitlement in property settlement (and spousal maintenance) and secure your financial future.

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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