



The effect of family violence orders on property settlement

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Family law property settlement is mostly determined based on the contributions of each party to the relationship, as well as the future needs of each party. In most cases, the marital conduct of either party is not considered to be relevant to the division of property. That is because family law in Australia is generally a 'no-fault jurisdiction'. In some instances, however, [family violence](#) can impact the outcome of a [property settlement](#).

Family violence orders and the law

The *Family Law Act* (the Act) defines family violence as:

“violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member) or causes the family member to be fearful.”

Examples of behaviour that may constitute family violence include:

assault;

sexual assault or other sexually abusive behaviour;

stalking;

repeated derogatory taunts;

intentionally causing death or injury to an animal;

intentionally damaging or destroying property; or

financial control.

A family violence order means any Court order, including [interim orders](#), made under a prescribed law or a State or Territory of Australia to protect a person from family violence.

A family violence order itself is not directly relevant to family law property settlement, however, the violent conduct that established the Order may be. The Act gives power to the Courts to alter property interests after considering future needs when looking at matters such as:

age and health of the parties;

income and financial resources of the parties;

children to the relationship and who has the care and control of those children; and

the standard of living that should be maintained.

You can learn more about assessing future needs in our earlier blog, [“Are my future needs considered in family law property settlement?”](#).

Currently, the Act lacks specific guidelines for considering the financial repercussions of family violence when it comes to property settlement. This means that considerations are largely left up to case law and the Courts. Reforms to Australian family law are coming, and we discuss this further below.

Landmark case – Court determines property settlement adjustment due to family violence

The [1997 matter of Kennon & Kennon](#) was a landmark case for Australia as it was the first time the Court acknowledged that a

property settlement should be adjusted based on the impact of family violence on a victim's ability to contribute to their relationship.

The Kennons did not have any children together, and their marriage lasted approximately 4 years. During their relationship, Mr. Kennon was earning significantly more than Mrs. Kennon, and he was the major contributor of assets.

Mrs. Kennon claimed that she should receive an additional percentage of the [property settlement asset pool](#) due to the family violence she endured throughout the relationship.

The Court considered a number of incidents of family violence that had occurred throughout the marriage. As a result of the family violence, Mrs. Kennon was diagnosed with anxiety, anorexia, depression, and various other stress-related illnesses.

This case established the ***Kennon claim***, which outlines three elements that must be satisfied for there to be an adjustment in property settlement due to family violence.

Those 3 elements are:

an ongoing course of violent conduct;

a significant reduction of that party's contributions to the marriage as a result of the violent conduct; and

that the violent conduct made his or her contributions significantly more arduous than they ought to have been.

There have been more cases that have looked at the ***Kennon claim***, such as [Spagnardi v Spagnardi](#) and [Keating v Keating](#). The more recent of the two, the Keating case, confirmed that corroborative evidence was not required for domestic violence to be accepted and taken into account in the context of a property settlement.

Further family law reforms on the horizon

Recently, the Federal Government was able to pass two significant amendments to the Act that will impact on parenting matters. You can read more about those changes in our recent blog, ["Major changes to the Family Law Act from October 2023"](#).

Whilst yet to be presented to Parliament, the exposure draft titled Family Law Amendment Bill (No. 2) 2023 (The exposure draft), seeks to introduce further reforms to the way separated couples handle the division of their property.

The current drafting of the exposure draft introduces new principles that would enable the Court to consider the effect of:

family violence, economic or financial abuse on each party's ability to contribute to the property pool; and

family violence on the current and future circumstances of a party (such as the need for a party to access ongoing medical care or therapy or limited income earning capacity).

If the exposure draft passes, these principles will become law, and it will mean that the financial impact of family violence can be considered in the process of determining property settlement.

How can a family lawyer help?

At Meillon and Bright, we have an experienced team of family lawyers who can assist with any family law related matter, regardless of whether family violence has occurred or not. If you have been affected by family violence and would like to discuss its relevance to your property settlement (or parenting arrangements), please contact us.

Further support

If you are in immediate danger, call [000](#) for emergency Police and Ambulance assistance

For 24/7 domestic and family violence information, counselling and support services available, call 1800RESPECT on [1800 737 732](#).

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.