

Will infidelity impact my property settlement?

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There are often many reasons why a relationship may break down. Separation is tough at the best of times but can be even more emotional and messy when another party, outside the relationship, is involved. When infidelity is a contributing factor to separation, common questions asked of family lawyers often relate to property settlement and whether one party can claim more from the cheating partner.

We're often asked:

> "*My partner cheated on me, can I take them to the cleaners?*"
>
> *or*
>
> *"I have left my partner for another person, will this come back to bite me?"*

Does infidelity impact property settlements?

In short, no.

Under the*Family Law Act 1975*, a 'no fault' system exists. This means the cause of the breakdown of a relationship is not recognised by the Courts.

However, this is not the end of the story.

The fact that your partner may have cheated on you during the relationship is not, in and of itself, grounds for adjusting the division of assets in property settlement. There are, however, certain situations where infidelity may impact or influence a property

settlement following the breakdown of a relationship.

Significant monies have been spent on the third party in the course of the infidelity during the relationship

In our blog, "How Does the Family Court determine property settlement matters?", we looked at the various stages of a property settlement. One of those steps is determining the contributions each party has made to the net asset pool of the parties.

Contributions are financial, non-financial, parenting and homemaking.

In some circumstances, it may be argued a party has made a negative financial contribution to the net asset pool, "wasted" away matrimonial assets in a reckless and negligent manner.

If an unfaithful party has spent money on a third party in the course of the affair (for example, purchasing expensive gifts, jewellery, property or airfares and accommodation), this may be considered wastage in relation to the relationship asset pool. This will depend largely on how much money was spent on the third party and whether there is evidence to prove how much was spent if the matter should proceed to court.

Has the party commenced living with the new partner?

Another step in determining a property settlement is to consider the parties'future needs.

For example, is there a relevant factor(s) that entitles one party to an adjustment of the asset pool in their favour due to having greater needs for the future? A common example is where one party may be significantly older than the other and therefore has less time to work and accumulate assets and superannuation before retirement.

It is common for a party to commence a new relationship before they have finalised their property settlement from a previous relationship. When one party has started living with a new partner, it is important to consider how their financial position may have changed as a result. For example, the new partner may own their own home mortgage-free and therefore, that party may not need to pay rent or contribute towards home loan repayments.

If the other party is continuing to pay the home loan (on the former matrimonial home or another property of the relationship), they may argue they should receive a greater share of the property pool to offset this future need.

The impact of infidelity on family law matters

The involvement of a third party in a relationship breakdown is likely to inflame an already emotive situation and circumstances for the parties.

Often a party who feels hurt and betrayed will act in a way that makes the process harder for the other party, even when they are aware it is not relevant to their property settlement.

This can occur in both property and children's mattersand will typically increase the duration and the costs for both parties, not to mention the emotional and mental costs of a prolonged settlement.

Seeking expert advice early from a family lawyer

If you are involved in a separation where infidelity was involved, we suggest you speak to an experienced family lawyer to consider your legal options.

Meillon & Bright's team of experienced family lawyers are specialists across all areas of family law.

We also work with a number of experienced professionals, including commercial lawyers, accountants and financial advisors, to consider all aspects of your family law matter to suit specific personal and financial circumstances for a variety of situations.

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.