



How are investment properties handled in property settlement?

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When a relationship breaks down, and there are investment properties, property settlement can be more complex. In Australia, the *Family Law Act 1975* sets out how property, like investment real estate, is identified, valued, and divided between parties.

This article explains how investment properties are treated in property settlements, what factors courts consider, and what practical options separating couples have.

What is considered an investment property?

An investment property is real estate owned primarily to generate income or capital growth rather than to live in. In a property settlement, the financial and legal interests attached to the property matter more than the label "investment property".

Investment properties can include:

residential rental properties;

commercial properties;

holiday homes rented out part-time;

properties owned individually, jointly, or through a trust or company.

Courts examine the property's role as an asset of the property pool, not how either party describes it.

Is an investment property part of the property pool?

In Australian family law, all property owned by either party is generally included in the property pool, regardless of:

whose name the property is in;

when the property was purchased;

whether the property was acquired before or during the relationship.

An investment property owned by one party alone still forms part of the overall pool for division. The question is how much weight the property carries in the final division, not whether to include it.

How investment properties are assessed by the Court

The Court follows a structured process when dealing with investment properties as part of a property settlement.

Step 1: Identifying the property

All investment properties are identified, including any interests held through:

companies;

trusts;

partnerships.

Hiding an investment property brings serious consequences, including penalties and adverse findings.

Read more about your duty to disclose in our earlier blog, [“What is the duty of disclosure?”](#)

Step 2: Valuing the investment property

Accurate valuation matters. This usually involves:

a jointly appointed independent valuer;

a valuation based on current market value;

consideration of rental income and liabilities.

Courts prefer a single expert valuation over competing valuations from each party.

You can read more about property valuations in our earlier blog, [“Property valuations in family law proceedings”](#).

Step 3: Assessing contributions of each party

Contributions are assessed across the entire relationship and can include:

initial financial contributions, including a deposit or [inheritance](#);

ongoing mortgage repayments;

non-financial contributions, such as property management or renovations;

contributions as a homemaker or parent, even if not directly linked to the investment property.

Contributions made during the relationship affect investment properties purchased before the relationship.

Step 4: Future needs adjustments

Courts then consider future needs of the parties, including:

income disparity between the parties;

age and health;

care of children;

ability to generate income or manage investments.

These factors alter how the value of an investment property is divided.

What about negative gearing and tax implications?

Investment properties bring tax consequences requiring careful consideration.

Key issues include:

negative gearing benefits received during the relationship;

capital gains tax (CGT) payable if the property is sold;

depreciation schedules and past tax benefits.

The Court generally looks at the net value of the property. Courts factor in future CGT when a sale is likely or unavoidable.

This affects the real value of an investment property in the settlement.

Options for dealing with investment properties

No single option exists for dealing with investment properties. Common options include:

one party retaining the property;

selling the property and dividing the net proceeds;

transferring ownership between parties and refinancing any mortgage;

retaining the property jointly for a short, defined period, although this is less common as the Court is generally seeking to sever the financial ties between the parties.

The right option depends on affordability, tax consequences, and the broader property pool.

Can one party keep the investment property?

Yes, one party can retain an investment property when they:

pay the other party their entitlement, either in cash or through other assets;

refinance the mortgage into their sole name;

demonstrate the ability to service the loan independently.

Without refinancing options, courts rarely order one party to retain the property.

What if the investment property is in a trust or company?

Properties held in trusts or companies add complexity. The Court examines:

who controls the entity;

whether the trust or company is effectively an alter ego of one party;

whether the property should be treated as a financial resource rather than a divisible asset.

A divisible asset is property valued and divided between the parties as part of the property pool. A financial resource is something a party has access to or control over, which courts cannot directly divide.

These cases are highly fact-specific and often require expert legal and financial advice.

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Timing issues and market conditions

Property settlements use current values, not values frozen at the time of separation. The Court usually relies on current values,

which means:

market rises or falls can affect entitlements;

delays can increase or reduce the value of investment properties;

rental income received post-separation may need to be accounted for.

This encourages the parties to reach an early resolution.

Frequently asked questions

Does it matter who paid the deposit for the investment property?

It matters without being decisive. The deposit counts as a contribution weighed alongside all other contributions over the relationship's duration.

Can an investment property owned before the relationship be excluded?

Rarely. Pre-relationship properties are usually included in the property pool, though they attract greater weight as an initial contribution.

Will the Court force a sale of an investment property?

Courts order a sale when it's the only practical way to divide the asset pool fairly, especially when refinancing is off the table.

Are rental profits shared after separation?

Rental income earned after separation needs accounting for when used to reduce the mortgage or to support one party.

Get help from a family lawyer

Investment properties form part of the overall asset pool in property settlements. Fairness drives the process, not ownership labels. Valuation, contributions, future needs, and tax consequences determine how an investment property is dealt with.

These matters are complex and financially significant. Early advice and proper disclosure are critical.

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.