



# Is my inheritance protected after separation or divorce?

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Unfortunately, inheritance is not a protected asset or property in family law matters when [married spouses or de facto partners separate](#). Due to the broad discretion afforded to the Family Law Courts in Australia, the treatment of inheritances can be a vexing issue in [property settlement matters](#).

There are several key factors that the Court will consider when evaluating an inheritance received by a party to a marriage or de facto relationship.

There are also strategies that can be used to protect inheritances received during a relationship.

## How might the court treat inheritances received during a relationship

Generally, the Family Court will adopt one of two approaches with respect to the treatment of an inheritance received during a relationship:

Quarantine the inheritance from the division of the net asset pool; or

Include the inheritance in the net asset pool as property available to be divided.

The Court, when considering the treatment of an inheritance, will have regard to a range of factors, including but not limited to the timing of the receipt of the inheritance.

If an inheritance was received at the commencement of a long relationship, it is likely time will erode the significance of this contribution. This could result in the Court considering it part of the asset pool for distribution.

If the inheritance was received close to the end of the relationship or after the relationship has ended, it is likely the Court will quarantine some or all of the inheritance, as it will be difficult for the non-inheriting spouse to claim or assert a contribution towards the inheritance.

If the inheritance was received as monies, and those monies were intermingled into joint finances used by both parties over many years, it is likely to be difficult to attempt to quarantine those inherited monies.

If the inheritance received was a house, and the non-inheriting spouse paid for all outgoings and repairs and maintenance on this property, it will likely be difficult to quarantine this house as a separate asset of the party who inherited it.

## How might the court treat inheritances received after a relationship has ended

Importantly, as with all property settlements, the value of the net asset pool is calculated at the date of trial, not the date of separation.

This poses obvious issues for a party who receives an inheritance close to separation or after separation but before financial settlement has occurred with their former partner.

Generally, most separated parties [finalise their property matters expeditiously post-separation](#). However, there are many situations [where parties separate, and many years pass before a financial settlement is done](#), and during this period, one party receives an inheritance. This can result in material consequences to the outcome of a financial settlement in this situation.

If parties have separated but not formalised their financial settlement (property settlement), and one party receives an inheritance, the Court will not likely treat that inheritance as protected property.

However, the Court will likely take into consideration the inheritance as a financial resource in which the inherited party will benefit and may provide the non-inherited party with a greater division of the net asset pool.

To avoid such situations, it is strongly advisable to finalise and formalise your property settlement either by way of [Consent Orders](#) or a [Financial Agreement](#).

## Options to protect an inheritance received during a relationship

If a party receives an inheritance during the relationship, the best protection to quarantine that inheritance is by way of a financial agreement. Of course, you need the consent of your partner for this to occur, given you're still in a relationship.

Financial agreements can be prepared to quarantine only an inheritance received, and all other assets or property of the relationship are not included in the agreement.

While financial agreements are never watertight, if drafted in accordance with the legislative requirements, they can provide protection under the Family Law system to protect inheritances.

## **Get help from a family lawyer**

If you require assistance with a family law matter regarding an inheritance, or you are anticipating receiving an inheritance, or you are considering separation, and you or your partner have received an inheritance, we recommend you seek legal advice from an experienced family lawyer as early as possible.

Meillon & Bright's team of experienced family lawyers are specialists in property settlements, including matters regarding inheritances received during relationships and drafting and preparing financial agreements to protect an inheritance.

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