

How personal injury compensation is treated in family law property settlements

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When going through a separation or divorce, one of the most difficult aspects can be working out how to divide property. This process can become even more complex when one partner has received a personal injury lump sum payment during or around the time of the relationship.

In this article, we explain how personal injury compensation payouts are treated during property settlement negotiations under Australian family law, including key factors the courts consider and how these payments may (or may not) be divided.

Property settlements in family law

In Australia, property settlement refers to the legal process of dividing assets and liabilities between separating couples. This includes:

- real estate;
- superannuation;
- bank accounts;
- vehicles;

investments;

debts and liabilities.

This process is governed by the Family Law Act 1975 (Cth), which aims to ensure that outcomes are just and equitable in each case. Generally, the Court works through four steps:

Identify and value the asset pool.

Assess the contributions of each party (financial and non-financial).

Consider future needs (e.g. earning capacity, age, health, care of children responsibilities).

Decide what division is fair and equitable.

Personal injury payouts are considered relevant when the parties are identifying and valuing the asset pool, as well as when looking at their contributions to the relationship.

What is a personal injury lump sum payment?

A personal injury lump sum is a one-off payment awarded to someone who suffers an injury or illness related to, for example:

workers' compensation;

motor vehicle accident claims;

public liability claims;

medical negligence claims;

abuse compensation claims.

These payments are often intended to cover pain and suffering (a lump sum component), loss of income, medical expenses and future care or assistance (also a lump sum component). Because they can be large in value, they may significantly affect the asset pool in a property settlement.

Are personal injury payouts always included in the property pool?

Not always. There is no strict or automatic rule in Australian family law requiring that a personal injury payout be included in the property pool. Instead, the Court takes a discretionary approach.

Key factors will the Court consider?

When the payment was received (before, during or after the relationship).

Purpose of the payout (e.g. ongoing care vs. lump sum compensation for pain and suffering).

How the funds were used (e.g. invested jointly or kept separate).

Financial needs of both parties.

Length of the relationship.

In some cases, the Court will treat a personal injury payout as part of the assets to be divided between both partners. In other situations, it may be seen as a contribution made by one person only, or even as money that should be kept separate from the total asset pool altogether.

Example scenarios when dealing with a personal injury payout in property settlement

Scenario 1: Injury payout received before the relationship commenced

If a person received a personal injury payout before the relationship began and kept the funds separate (e.g. in an individual account), it may be treated as a pre-relationship asset. In short relationships, the other party may not be entitled to a share.

Scenario 2: Payout used for joint purposes

If the payout was used to buy a shared home, fund holidays, or support the other (non-injured) partner, it may be seen as a joint contribution. The injured party may not be entitled to retain the full amount.

Scenario 3: Injured party has greater future needs

If the injured party has ongoing health problems or cannot work, the Court may include the payout in the asset pool but adjust the settlement in their favour due to their greater future needs.

How to protect a personal injury payment

If you want to protect your compensation from being divided in a future separation, consider:

keeping the funds separate from joint assets;

avoiding using the funds for joint expenses;

entering into a binding financial agreement (BFA), sometimes known as a pre-nup or post-nup;

maintaining clear records of how and when the payment was received and spent.

These steps won't guarantee the payout is excluded from the asset pool, but they strengthen the argument that it was a personal asset rather than a joint asset.

Can I quarantine a personal injury payout?

It is possible, but not guaranteed. You can argue that a personal injury lump sum should be quarantined (excluded) from the asset pool. The success of this argument depends on:

when the payment was received;

the purpose of the funds (is it to cover future medical expenses or for general pain and suffering?);

whether the money was mixed in with joint finances;

the financial impact of the injury;

the overall fairness of the proposed property division.

In longer relationships with pooled/shared finances, it is rare that the entire payout will be excluded from the asset pool for

distribution.

Mediation and legal advice are key

Property settlements involving personal injury payouts are legally complex and require careful consideration. To achieve a fair and reasonable outcome:

- seek legal advice early from a family lawyer with experience in property settlements;
- engage in mediation or alternative dispute resolution where possible;
- keep detailed records (e.g. medical reports, financial records, etc.).

In summary

- A personal injury lump sum may be included in the asset pool during family law property settlement negotiations, depending on the circumstances.
- Courts consider the timing of the payout, use of the funds, and the purpose of the payout.
- The injured party's future needs play a major role in the final determination.
- It's not automatic to include or exclude a lump sum payment - each case is decided on its own facts.
- Legal advice and good record-keeping are critical.

Get help from a family lawyer

Personal injury payouts add a layer of complexity to separation and divorce. Every case is different, and how the payout is treated depends on the specific facts. Courts will consider when the payout was received, its purpose, how it was used, and each party's needs.

Legal advice and preparation are critical to ensuring your rights are protected during the division of property.

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.