

Inheritances and Family Law

During many relationships, whether marriages or defacto, one or both parties may receive an inheritance from a family member or friend. Often such inheritances are applied to the parties' joint pool of assets in some way, such as paying off a mortgage.

Problems arise when the relationship breaks down, and the party who received the inheritance seeks to somehow "quarantine" or "get back" the amount of the inheritance.

If received post-separation, you may be successful in arguing that the inheritance should be excluded from claim by your former partner. However this can affect what you are entitled to by way of property settlement from your joint assets.

If received during the relationship, particularly if early on, it is likely that the inheritance will be treated as a joint asset. In such cases, the person who received the inheritance often receives what is called a "contribution" percentage adjustment in their favour when assessing property settlement entitlements. However, that adjustment is rarely dollar for dollar equivalent to the inheritance amount received.

Whether an inheritance forms part of the assets available for division, depends on a number of factors including, but not limited to:

- (a) Was the inheritance received before separation, and if so, how long ago?
- (b) How much was the inheritance when compared to the value of the rest of the assets?
- (c) Was the inheritance applied to relationship assets, such as paying off a joint mortgage?
- (d) Are there any children and how old are they?
- (e) Who is going to have the ongoing care of the children?
- (f) How long was your relationship from the date of cohabitation until separation?
- (g) If received before separation, was the inheritance quarantined in some way?

There is much case law on this issue, where inheritances have been both included and excluded from the relationship asset pool. What will happen in your case will depend very much on the very specific facts of your matter.

If you are entering into a new marriage or defacto relationship and expect to receive a substantial inheritance in future from say a parent, you may wish to consider whether you should enter into a Financial Agreement (prenuptial agreement) with your new partner to protect the prospective inheritance in the event of a separation. Depending on your particular circumstances, entering into a Financial Agreement may be advisable.

For specialist family law advice, call Katrina Oner from Oner Family Law on (07) 3010 9742.