

## Inheritances and family law

Families and money can sometimes be a volatile combination. That is never more so than when divorces and Wills are concerned.

### **When is an inheritance an asset for family law purposes?**

The simple answer is “almost always”. But the answer is not always simple.

### **Why is an inheritance an asset?**

When a separating couple needs to divide their assets, they must work out what is in the pool of net assets to be divided. That pool includes all the assets and liabilities in each person’s name and in the parties’ joint names, as well as each person’s share of an asset owned jointly with another person.

If one person received an inheritance before or during the relationship, that inheritance would normally form part of the pool of assets available to be divided.

### **Does that mean my partner gets half my inheritance?**

No, not necessarily. Just because an asset is included in the pool of assets available for distribution does not mean that the asset or the whole pool will be divided 50/50.

Once the couple has worked out what is in the pool of net assets, they must then consider what contributions they each made and consider their respective future needs, in order to work out the percentages of the net assets they will each receive.

### **What are contributions?**

When working out which partner made what contributions, family law looks at financial contributions - i.e. who earned what, who brought what lump sums into the relationship, who bought what and who paid for what - and also non-financial contributions - such as being a homemaker and parent, physically renovating a home or landscaping a garden, managing the parties’ financial affairs, etc.

After a long relationship, where there haven’t been any significant inheritances or other financial windfalls, the Court usually finds that financial and non-financial contributions during the relationship were roughly equal.

An inheritance received by one partner before the relationship started would be treated as an initial financial contribution by that partner - i.e. money or assets that person brought into the relationship. Similarly, an inheritance received by one partner during the relationship is usually considered to be a financial contribution by that person.

In these circumstances, depending on factors such as the size of the inheritance, when it was received, what it was used for and the parties' other contributions, this would normally mean that the person who received the inheritance would be treated as having made greater contributions during the relationship.

### **What about an inheritance received after separation?**

This situation is less clear cut. The Court usually finds that an inheritance by one partner was contributed solely by that person. So, it would usually find that the other partner did not contribute to the post-separation inheritance and it should not be included in the pool of assets to be divided.

However, different circumstances could produce a different outcome. For example, if the post-separation inheritance had been received from the husband's mother and the wife had had a close relationship with her mother-in-law and had cared for her during an illness, the Court might find that both parties had contributed to the receipt of the inheritance.

### **Future needs**

After working out financial and non-financial contributions, the couple or the Court must compare each person's future needs before finalising a percentage division of the net assets. Future needs include things like income, earning capacity, financial resources, ongoing care of children, age, health, etc.

An inheritance, even one received after separation, could be relevant at this step. That is, it would likely mean that the recipient of the inheritance would have greater financial resources and might be receiving income from an inherited investment, so that their future financial circumstances could be stronger than those of the other partner. In such a case, the Court would probably adjust the percentage division of the net asset pool in favour of the other partner.

### **Summary**

An inheritance received before or during a relationship will almost always be treated as an asset available for distribution between separating parties, whereas an inheritance received after separation will usually be found not to fall into that pool of assets. However, that does not necessarily mean that the other person is entitled to half the inheritance.

The receipt of a large inheritance will almost always have a significant impact on the Court's decision about which partner made what percentage of contributions. In addition, an inheritance, including one received after separation, could impact the Court's future needs adjustment.

Every case is different and how an inheritance might be treated in your situation will depend on your particular circumstances. If you need assistance or advice on how to proceed please call us on (03) 9459 5764 or email [admin@rtlegal.com.au](mailto:admin@rtlegal.com.au).