



Inheritances & Marriage breakdown

During many marriages or de facto relationships, one or both parties may receive an inheritance from a family member or friend. Often when the inheritance is received, it is 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 “get back” the amount of the inheritance.

If the inheritance was received after the 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 the inheritance was received during your 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 a dollar for dollar equivalent to the inheritance amount received.

Whether an inheritance forms part of the assets available for division between the parties depends on a number of factors including;

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

Whether the inheritance will be included or excluded from the relationship asset pool, will depend very much on your specific facts. If you are entering into a new marriage or de facto relationship and expect to receive a substantial inheritance in future from say a parent, you may wish to protect the possible inheritance in the event of separation by entering into a Financial Agreement (prenuptial agreement) with your new partner.

If you have any query regarding an Inheritance or generally regarding division of property after a relationship breakdown, please contact one of our experienced family Lawyers Oliver Hagen or Ken Gray on 02 4731 5899 or email us at familylaw@batemanbattersby.com.au.