



What is considered “property” in Australian family law proceedings

Date: Monday March 27, 2023

Following separation, an important step is to undertake a [property settlement](#) that finalises the distribution of any property of the relationship. In order to identify and value the parties' property, it is imperative to understand what is “property” in Australian family law proceedings.

This blog explores how “property” is defined for family law purposes. You can also read more about ascertaining what property of the relationship there is in our previous blog, [“Understanding the total asset pool in property settlement”](#).

What is “property” in family law property settlement matters?

Property available for division after separation (either de facto or married couples) includes all assets, liabilities, superannuation, and financial resources that the parties have an interest in under their sole or joint names and, in certain circumstances, interests in corporate entities and trusts, whether the interests exist in Australia and/or internationally.

Common categories of “property” include:

real estate;

savings, including funds in bank accounts, cash in hand and [superannuation funds](#);

motor vehicles;

digital assets, including cryptocurrency;

unlisted or listed investments;

personal property, including household contents, antiques/vintage items, artwork, and jewellery;

- [domestic family pets](#);

lottery winnings;

- [inheritances](#);

employee entitlements, such as long service leave or redundancy payments;

assets or shares held by trusts;

business interests and business assets; and

credit card debts, personal loans, loans owing to or by third parties and tax liabilities.

Will all my property be available for division?

Australian courts consider how and when property was acquired by one or both parties when considering the total asset pool available for division.

There are circumstances where assets may be dealt with on an asset-by-asset approach as opposed to the more common global approach to financial property settlements. To read more about these approaches, you can read our blog [“Global vs asset-by-asset approaches to family law property settlement”](#).

Sometimes, property can be excluded from the property pool available for division; for example, an inheritance or gift of monies received by one party post-separation. However, exclusion of assets is particular to the circumstances of each individual matter and property settlement.

So, in short, yes. All property assets, liabilities, superannuation and financial resources of value are up for negotiation in property settlement matters.

Can I protect particular assets from division in a property settlement?

Parties may be able to quarantine particular assets or financial interests from a property settlement by entering into a Financial Agreement at the commencement of, during or after a relationship/marriage. By quarantining, there is still the requirement for [full and frank disclosure](#) of the particular asset of financial interest, however, parties can choose to deal with certain items separately prior to separation.

A financial agreement pursuant to the *Family Law Act 1975* (Cth) or the *Family Court Act* is a written agreement that sets out how your assets will be divided in the event of separation. It covers both de facto relationships and marriages. They are often referred to as prenuptial agreements. You can learn more detail in our blog [“What is a family law financial agreement?”](#).

Entering into a financial agreement is an excellent way of protecting financial security and achieving peace of mind for some parties. Meillon and Bright Director [Matthew Kinder](#) has worked with many clients to provide favourable outcomes through financial agreements after the breakdown of the relationship.

Get help from a family lawyer

If you have questions regarding family law property settlement or you need assistance in drafting a financial agreement, our team of experienced family lawyers at Meillon & Bright can help.

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.