Asking a divorce lawyer about property settlement

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The breakdown of a relationship can be emotionally exhausting. Especially during the dissolution of a marriage, divorce proceedings and the distribution of assets is necessary. However, it can be tiresome when both parties are emotionally charged. Seeking advice from a divorce lawyer can help lessen the burden that falls on parties. This is considering that they are yet to seek out where and how their property is to be distributed. A big part of understanding how property is to be handled is the fundamental question of what is considered to be property. From the involvement of divorce lawyers and cases that have been heard before the court, it has been determined that the term “property” includes:

- All real and personal property
- Pre-marital property
- Post-separation lottery win
- Partnership in a law firm
- A lottery win from a ticket bought during the marriage
- An award for damages from a personal injury claim
- A redundancy payment
- Sales not recorded in the books of a business
- A taxi licence

The Court's position

Whilst this list is not exhaustive, it does provide a good indication of the scope and variety of property that can be put up for discussion in proceedings. Interestingly, the Full Court in *AJO & GRO (Omacini)* found that there are three categories of cases where an asset that no longer exists can be considered property. These are then added back into the pool for consideration. They included:

1. Paid legal fees (unless paid from a party’s post-separation income).
2. Where a party had made a premature distribution of matrimonial assets by selling, and benefitting from the proceeds of sale of an asset that the other party had a legitimate interest in.
3. What is termed “waste”, meaning financial loss as a result of a party’s conduct which was designed to reduce the value of matrimonial assets.

Therefore, unless consulting with a divorce lawyer on the matter it may become difficult to determine what your entitlements may be in a dispute.

Contact us on 1800 300 170 or email us at famlaw@matthewsfolbigg.com.au

Disclaimer

Family law situations can be complex and sometimes they can involve serious issues. Information outlined is proposed to provide general guidance only. Due to the seriousness of legal matters as well as the

uniqueness of your individual situation, professional advice should be sought. For advice, please contact one of our Family Lawyers.