

Will Expected Inheritance Be Included in My Family Property Settlement Agreement?

Date : May 21, 2020

An expected or future inheritance is an inheritance that one party is expecting to receive once the testator passes away. Will the Family Court take into consideration a future or expected inheritance in your divorce settlement? If you or your ex-spouse are anticipating an inheritance, say from an elderly parent, you may want to get some advice regarding how this may impact your property settlement agreement.

In the 1995 case of *White & Tulloch* the Court noted that the expectancy of inheritance will generally not amount to a financial resource to be considered in your property settlement agreement. The term financial resource involves some degree of “*entitlement to, control over, or relative certainty of receipt of property*”. On the other hand, a will has been described as a mere expression of intention at the time it was made. They may be revoked or altered and only have legal effect upon the death of the testator. In this case, the expected inheritance of an elderly parent was not included in the divorce settlement.

The Court may also consider the likelihood of the inheritance being received. In the matter of *De Angelis and De Angelis*, the Court held that given the wife’s aunt was 90 years old, suffered from dementia and was unlikely to have the capacity to amend her will, it was likely that the wife was going to receive the inheritance. Also taking into account the significant maintenance work that the husband completed on the wife’s mother’s home and the small property pool, the Court held that it would be unjust to exclude the future inheritance from the pool.

While there is no absolute rule, whether or not your future inheritance will amount to a financial resource will depend on your unique circumstances.

For advice about how your future inheritance can impact your property settlement agreement 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.