

# WHAT PROPERTY IS INCLUDED?

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The Family Law Act provides a very broad scope for what can be included in a property settlement. But what happens if an asset is acquired by one spouse after separation – is that included? The court recently considered this interesting question.

## The Facts:

- The parties were married and had been together for 17 years before they separated in 2007
- The parties eventually divorced in January 2012
- At the time of the court hearing, there were 2 dependent children aged 17 and 14
- The parties had a house in their possession, a loan from the husband's parents to obtain the house (which had been repaid) and a mortgage. The asset pool consisted of the equity of the house of approximately \$140,000 and a business of lesser value
- Before the separation, the husband was running the business, where he and the wife were joint partners – he handled the day-to-day operations and she looked after the books and any administrative duties. After the couple separated, the husband became the sole owner of the business, while the wife and children kept living in the family home
- The husband continued to pay the house mortgage from 2007 through to 2009, however when he suspected his wife had developed a relationship with a new partner he ceased making the mortgage payment. At this point, the house was rented out to a third party with the rent being deposited into a joint account which was then used to cover the costs of the mortgage
- In late 2011, nearly 5 years after the separation, the husband received an inheritance from his late brother's Will in the sum of \$715,000

## The Trial:

At the trial the Judge ordered that the inheritance was a 'financial resource' of the husband, therefore essentially excluding it from the 'property pool' on the basis that it was a 'post separation' acquired asset. The wife appealed this decision arguing that the inheritance should be included as an asset of the parties and divided accordingly.

## The Outcome:

The wife's appeal was successful, the Appeal court deciding that it was incorrect to deem the inheritance as a 'financial resource' of the husband only. The Appeal court decided that it was wrong in their view that any asset should be excluded from (or immune from consideration) the property adjustment between the parties.

The case stands as a reminder, that if a property settlement is delayed new property can arrive that complicates the process.

When it comes to separation, the earlier you obtain professional legal advice, the better outcomes you are likely to achieve. Many unwanted situations can be avoided when the right action plan is in place from the start. To arrange your initial fixed-fee consultation please call us on (07) 3221 4300 and be clear about the options available to you.

