



# The Great Wealth Transfer: What Divorce Could Mean for Your Inheritance

Over the next 20 years, **an estimated \$5.4 trillion is expected to change hands in Australia.** That's trillions of dollars flowing from the superannuation funds, bank accounts, property portfolios and investments of baby boomers, often described as "the richest generation to have ever lived", to their children and grandchildren.

It's being called the **Great Wealth Transfer**, and it will reshape the financial landscape for millions of Australian families. But with divorce rates remaining significant across all age groups, a critical question arises: what happens to your inheritance if your relationship breaks down?

## Is Your Inheritance Protected in a Divorce?

This is one of the most common questions we hear from clients, and the answer often comes as a surprise.

Inheritances are not automatically excluded from a property settlement. In most cases, the Court will consider an inheritance as part of the overall pool of assets available to be divided between

separating parties.

How the inheritance is ultimately treated will depend on a number of factors, including when it was received, how it was used, and the overall financial circumstances of both parties.

## When Did You Receive the Inheritance?

Timing is one of the biggest factors the Court considers.

**Before or early in the relationship:** An inheritance received before the relationship commenced, or in its early stages, is more likely to be treated as an initial financial contribution to the relationship. Over a long marriage, the weight given to that contribution may diminish.

**During the relationship:** If the inheritance was received during the marriage or de facto relationship and was used for family purposes, such as paying down the mortgage, renovating the family home, or funding holidays, it is likely to be treated as a shared asset. If it was kept entirely separate, the Court may take a different view.

**Late in the relationship or after separation:** An inheritance received towards the end of the relationship, or after separation but before property settlement is finalised, can still be taken into account. In some cases, a large inheritance received late may be effectively excluded from the asset pool, but this is not guaranteed.

## What About an Inheritance You Haven't Received Yet?

With the Great Wealth Transfer expected to peak through the 2030s and 2040s, many Australians are anticipating, but have not yet received, an inheritance from ageing parents.

Generally speaking, a prospective inheritance (one you expect to receive in the future) will not be included in the property pool. This is because the person making the Will can change it at any time, and there is no certainty the inheritance will eventuate. However, in limited circumstances, such as where the benefactor has lost testamentary capacity and can no longer alter their Will, a prospective inheritance may be considered as a financial resource relevant to the settlement.

It is therefore very important to seek legal advice from a lawyer specialising in that area. For the person that is leaving the inheritance, they need to speak to an Estate Planning specialist. For the person that expects to receive the inheritance, that is a Family Law specialist. Beware, by the time you receive the inheritance it may be too late.

## What Can You Do to Protect an Inheritance?

While no strategy is completely watertight, there are practical steps you can take:

**Keep inherited assets separate.** Avoid mixing inherited funds with joint accounts or using them for shared expenses where possible. Maintaining a clear paper trail can be important evidence.

**Consider a Binding Financial Agreement.** A financial agreement (sometimes called a “prenup” or “postnup”) can set out how an inheritance will be treated if the relationship ends. Both parties must receive independent legal advice for the agreement to be enforceable.

**Consider leaving inheritances in a Testamentary Trust.** This is a trust that is established on the death of a party to hold part or all of their estate for the benefit of their beneficiaries.

**Seek legal advice early.** Whether you have already received an inheritance or expect to in the future, understanding your position sooner rather than later can make a significant difference to the outcome.

## How Can Andersons Help?

With trillions of dollars set to flow between generations over the coming decades, the intersection of inheritance and family law has never been more relevant. Whether you are navigating a separation, considering how to protect an inheritance, or simply want to understand your rights, our experienced Family Law and Estate Planning teams can provide clear, tailored advice for your situation.

One of the key benefits of Andersons is that we lawyers specialising in both areas of law so we can make sure you are getting the best and most up to date advice across those areas of law.

We have a team of Family Lawyers experienced in all aspects of separation, divorce, property settlements and estate planning matters. We have 6 locations across South Australia that we practice from. If you would like to have a confidential discussion on your personal situation, please contact our friendly Family Law team on **8238 6666** or alternatively, send through your enquiry at [enquiry@andersons.com.au](mailto:enquiry@andersons.com.au).

*This article provides general information only and does not constitute legal advice. Every situation is different, and you should seek professional legal advice tailored to your individual circumstances.*