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## How can domestic violence affect Family Law property settlements?

Author: [Eva Bailey](#)

Email: [enquiry@andersons.com.au](mailto:enquiry@andersons.com.au)

Phone: 08 8238 6634

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Domestic violence is a concern for many people in their relationships and after separation. As more and more serious cases come to light it is also becoming a bigger and greater concern for our community at large.

Issues around family violence can affect decisions to be made in relation to the care of children after two people separate. You may find our recent article [“How does domestic violence affect child custody arrangements”](#) of interest.

The fact is that domestic violence and a history of incidents and difficulties relating to this can affect the determination of an appropriate division of the property of two parties to a marriage or a de facto relationship after they separate. The law on this topic

is still developing and it is hard to give a clear picture of how exactly such concerns will be dealt with by a court when making a decision about dividing property.

What is clear is that, in accordance with the *Family Law Act 1975*, the law does take into account the contributions made by each party to the acquisition, improvement, and maintenance of the assets of the parties, the contributions made to each other and the contributions made to the welfare of the family. It has been successfully argued in some cases that one party's contributions to the relationship have been greater than the other party's contributions due to the fact that they have made those contributions while also suffering domestic violence perpetrated by the other party.

In some cases judges have been asked to consider whether or not the domestic violence caused by a party might be seen as a negative contribution by that party to the relationship. However there has been some reluctance to adopt this view.

It is also accepted that domestic violence may have long term consequences on the health of an individual due to them suffering from physical or psychological injury as a result of assault or other forms of abuse. The law takes into account a party's future needs in determining an appropriate division of property. Accordingly if someone has suffered injury as a result of violence within their relationship that affects their health and may also affect their income earning capacity, then this is an issue that will be taken into account when dividing the property of the relationship.

It is important to point out that in terms of dividing property we have long ago moved away from the concept of attributing fault for the separation to one of the parties, which previously impacted on property division. The courts are reluctant to "open the floodgates" on this concept again by allowing the existence of domestic violence alone to be a factor that affects property division. Given this, there has been some argument to the effect that it should only be considered in exceptional cases where there has been "extraordinary efforts" by a person "in persisting with contribution in the face of enormous and unjustified adversity"; [\*Kozovski & Kozovski \[2009\] FMCAfam 1014\*](#).

Domestic violence is something that may currently affect an appropriate division of matrimonial property in [Family Law](#) matters, following a separation on the basis of either contribution factors or future needs. The extent of the violence and its impact on the victim will be an important consideration. Ultimately to what extent domestic violence occurring in a relationship affects the parties' [property settlement](#) will be an issue to be argued and agreed between the two parties with the help of their respective solicitors or otherwise it will be determined by a Judge if the matter proceeds to trial.

Today's primary researcher and writer is Law Clerk in Family Law, [Rebecca Lucas](#). She has been assisted by Senior Associate in Family Law, [Eva Bailey](#).

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