



hethertons
SOLICITORS



What will happen to my inheritance upon divorce?

By Jessica Mah

Upon separation, many individuals find themselves in an unfamiliar legal landscape during, what is, a highly emotive and stressful period.

One main issue we see consistently among clients relates to their concerns about either their or their ex-partner's inheritance.

The starting point

When determining the split of matrimonial assets during separation the starting point is a 50/50 division. This is known as the "sharing principle". This seems simple on paper, but in practice, each client's case presents a unique set of circumstances.

Very rarely do we see cases where it is as simple as dividing the marital pot equally. This is because, although the starting presumption is that matrimonial assets are shared 50/50, the court can depart from equality based on the parties' needs. That is, each party's *immediate reasonable* needs.

While the criteria to determine a party's needs comes from section 25 of the Matrimonial Causes Act 1973. This section of the law gives courts a wide discretion to depart from equality where one party can demonstrate a need for a greater share of the assets.

'Matrimonial' vs 'Non-Matrimonial Property'

However, the discussion becomes even more complex when looking at the difference between 'matrimonial' and 'non-matrimonial' property.

As above, matrimonial property' is subject to the sharing principle (i.e. 50/50 split). In contrast, non-matrimonial property' is not automatically subject to the sharing principle.

This naturally raises a very important question: "What is the difference between 'matrimonial' and 'non-matrimonial property'?"

Matrimonial property can be broadly defined as all property acquired by the parties during the marriage, while 'non-matrimonial property' is generally understood as property brought into the marriage from an external source by one of the parties (without any contribution from the other).

Generally, it is accepted in family law that 'non-matrimonial' property is not subject to the sharing principle (i.e. an assumed 50/50 split).

However, it is important to note that 'non-matrimonial' property, such as inheritance, is very rarely considered in isolation, but rather, it is assessed within the wider context of each case. This is why we always recommend that parties seek independent legal advice, so each party can be properly advised based on the specific facts of their case.



For further advice, please contact Jessica in our Family Department on 01904 528389 or at jxm@hethertons.co.uk
hethertons.co.uk