

Drugs and alcohol in family law property settlement

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When drug and alcohol misuse or family violence intersects with the family law system, such behaviour will have an effect on how parenting matters and property settlement are dealt with by the courts. In this blog, we will explore how such factors or allegations are dealt with in relation to property settlement proceedings.

For more information about drugs, alcohol and family violence in relation to parenting matters, please read our blog "Drugs and alcohol in family law parenting matters".

How the Courts deal with drug and alcohol misuse in property settlement matters

Generally speaking, the Court will view a marriage or de facto relationship as a partnership and therefore presume that any losses incurred during the relationship should usually be shared when it comes to negotiating property settlement. This can include losses incurred during the relationship, such as debt accrued in relation to drug or alcohol misuse.

In some cases, Courts have been willing to make an exception to the rule that losses be shared. This can happen where:

- one of the parties has embarked upon a course of conduct designed to reduce or minimise the value or worth of matrimonial assets, or
- one of the parties has acted recklessly, negligently or wantonly with matrimonial assets, the overall effect of which has reduced or minimised their value.

How the family law system deals with debt accrued through drugs or alcohol misuse is a complex process, and each case will depend on its own individual facts.

It can be very difficult to succeed with the argument that one party should be reimbursed because of another party's losses due to divesting funds on drugs and/or alcohol. This is especially the case if both parties used drugs or alcohol during the relationship or where the use of drugs and alcohol was generally accepted as a form of entertainment during the relationship.

However, every case is different, and the strength of such an argument will depend entirely on the unique circumstances of each family.

How the Courts deal with family violence in property settlement matters

Family violence (domestic violence) during the relationship is usually not relevant to property settlement matters.

While it is important to provide context of any family violence to your lawyer and, if necessary, the Court to explain the dynamics of the relationship, family violence will often not have an impact on any final property division. The exception to this rule is where the family violence was of such extraordinary, serious or significant nature that it gives rise to an adjustment when determining property orders.

For example, if the impact of the family violence has had such a significant impact on the other party that any contributions made by this other party were much more arduous as a result, then the Court may take this into account in determining a property settlement (giving rise to an adjustment in favour of the party subject to the violence).

The leading case in this area is the 1977 case of *Kennon &Kennon*, which was the first case to recognise this principle (sometimes referred to as a 'Kennon argument).

To rely on *Kennon &Kennon*, the following elements must be present in order for a party to receive an adjustment on the basis of family violence:

That there was family violence;

- That this family violence occurred during the relationship; and
- That there is proof that such family violence had a significantly adverse impact on the party's contributions to the relationship or made such contributions significantly more arduous.

This argument is difficult to make. Due to the nuances associated with family violence, it is often challenging to meet the above requirements to such an extent as to give rise to any adjustment to the property settlement.

We recommend you seek legal advice to determine what likelihood a Kennon argument has of being successful in your family law matter and what adjustment (if any) is likely to be made on the success of such an argument.

How a family lawyer can help

Due to the complexities associated with drugs, alcohol and family violence (domestic violence) in property settlement matters, there is no ‘one size fits all’ approach.

Although the misuse of drugs and/or alcohol and the existence of family violence does not usually have an effect on the outcome of property matters, there are certainly cases where it is appropriate for these factors to be taken into account.

We recommend seeking legal advice to see what property division may be just and equitable, taking into consideration all the circumstances of your matter.

Contacting Smith Family Law

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Drugs and alcohol: get help and support

There is a range of national drug and alcohol support services that can assist, including counselling and outreach organisations.

Crisis support:

- Lifeline
  13 11 14
- Beyond Blue
  1300 224 636
- Alcohol Drug Information Service
  1800 250 015
- Alcoholics Anonymous
  1300 222 222
- Family Drug Support Australia
  1300 368 186
- Kids Help Line
  1800 551 800

Counselling services and outreach organisations:

- National Alcohol and Other Drug Hotline
  1800 250 015

- Alcohol and drug counselling online
- Drug and Alcohol Services Australia
- Lives Lived Well
  1300 727 957

Family violence: get help and support

If you are in immediate danger call 000.

If you are not in immediate danger, you can still report family violence to the police by calling 131 444 or by attending a police station.

For other family violence services, please refer to our blog about family violence and support services.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.