

What are Search Orders in family law property settlement?

Date: Sunday March 31, 2024

Search orders are a type of court order that allows one party to search premises related to another party to locate and seize specific documents or other evidence related to a family law matter. Family law Search Orders are mostly used in property settlement matters where there is a reasonable belief that another party has relevant evidence in their possession and that they may destroy it.

Search Orders assist in achieving a fair and equitable property settlement by obtaining a full and accurate picture of the parties' assets and liabilities.

In this blog, we look at Search Orders and how they are used in family law matters.

Financial disclosure in a property settlement

In a property settlement, you and your former partner will be required to provide 'full and frank disclosure'. This means that you will need to exchange details and documents about your finances, including property, superannuation, income, mortgages, tax debts, financial resources and any other assets and liabilities.

The purpose of exchanging this financial disclosure is so both parties and the Court can have an accurate understanding of the parties' financial circumstances and ensure that a fair and equitable settlement is reached. You can read more about what each party needs to provide by way of disclosure in our blog on full and frank disclosure.

What happens if my partner doesn't share everything about their finances?

Sometimes, parties may try to hide assets or misrepresent their financial situation in an attempt to obtain a better outcome in their property settlement.

There are preliminary steps that need to be taken to compel the other party to provide financial disclosure before you can make a Search Order application. These include seeking a Court Order for the other party to provide the documents or issuing a subpoena compelling a third party to provide documents.

Search orders are usually more appropriate where there is a reasonable belief that one party may be hiding assets **and** may attempt to destroy or remove them.

If you believe that your former partner has not been forthcoming in their financial disclosure or they are contravening their disclosure obligations, you can consider applying for a Search Order.

When can I apply for a Search Order?

Search orders are used to determine the actual asset pool, where there is a reasonable belief that another party has relevant evidence in their possession and may destroy it.

Although Search Orders are not commonly granted, a party can make an application for a Search Order if they believe the other party has or will dispose of assets during family law proceedings in order to gain an advantage or hide part of the asset pool.

The type of evidence required for a Search Order to be granted will differ in each case, however, it may include one party not disclosing investments that the other party knew they owned during the relationship. This could include cryptocurrency or tangible property such as jewellery or where there are discrepancies between bank account statements and the value of recent purchases.

Depending on the type of Search Order granted, the Court can order that:

- the Respondent (the party being searched) must permit the Applicant (either alone or with another person) to enter the Respondent's home to inspect or seize documents or other property (such as the property in question) and/or take copies of documents;
- the Respondent disclose specific information that is relevant to the proceeding; and
- the Respondent is restrained from telling anyone else (not including the Respondent's lawyer) about the order for up to 7 days. This is intended to stop the Respondent from having someone else dispose of the property on their behalf.

It is important to note that Search Orders are not granted easily, and a high level of evidence needs to be provided to convince the Court why a Search Order is necessary.

When will a Search Order be granted?

The reasons for the application for a Search Order must be compelling. There must be evidence that the Respondent actually has the documents or property as asserted by the Applicant.

So that the Court can determine whether the making of a Search Order is appropriate, the Applicant must support their application by way of filing an Affidavit that addresses the following matters:

- A description of the document or property to be seized or inspected;
- The address of the premises where the Search Order is to be carried out;
- The reason why the Applicant believes the Respondent may remove, destroy or alter the document or property in the absence of the making of the Search Order;
- A statement about the damage the Applicant is likely to suffer if the Order is not made;
- A statement about the value of the property to be seized;
- The name of the person (if any) who the Applicant wishes to accompany them to the Respondent's premises;
- The consent of one or more lawyers to act as 'independent lawyers'; and
- The fees proposed to be charged by the 'independent lawyers'.

Upon considering the Applicant's Affidavit along with any other evidence available, the Court must further be satisfied that the financial evidence sought through the Search Order is so important to the proceedings that if the evidence was not preserved by way of the Search Order, it may seriously damage the outcome for the Applicant.

'Independent Lawyers'

If the Court makes a Search Order, the Court must appoint one or more lawyers ('the independent lawyers') to:

- supervise the execution of the Search Order; and
- do any other acts or things in relation to the Order that the Court considers appropriate.

The Court may appoint different independent lawyers to supervise execution of the Search Order at different premises, should the circumstances warrant this (rather than one independent lawyer attending separate premises one by one). The independent lawyer may further be given the power to do any other acts or things in relation to the Search Order that the Court considers appropriate.

As the independent lawyer is intended to be independent from the proceedings, the lawyer cannot be the lawyer acting for any parties to the relevant family law proceeding.

How a family lawyer can help

An application for a family law Search Order must be supported by an Affidavit outlining the details of the documents or property you are seeking to search.

If you are unsure about whether your former partner has provided full disclosure of their financial position, we recommend you speak to a family lawyer to decide if a Search Order is the right step for you. Contact Smith Family Law if you need assistance with applying for Search Orders or other property settlement matters.

Contacting Smith Family Law

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