



Use of a Search Order in family law property matters

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E&A Lawyers has made the decision to no longer provide family law services. While we no longer take on any new family law matters, we are happy to assist by referring you to lawyers specialising in this area. Please don't hesitate to contact us if you would like a referral.

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A Search Order (formerly known as an Anton Piller Order) is available as a remedy under the Family Law Act 1975 (Cth). A Search Order is an order for the seizure or inspection of evidence to allow the Applicant to prove the existence or value of an asset which is critical to the family law proceedings.

It is rare to make an application for a Search Order in [family law property matters](#), however, it is not unheard of. If you are concerned about your former partner disposing of assets before, or during your family law matter, then it is important that you are aware of the remedies available to you to prevent this from occurring. After all, prevention is better than cure!

What does a Search Order allow?

Under *Rule 5.19 Federal Circuit and Family Court of Australia (Family Law) Rules 2021* a party may apply for a Search Order for the following:

- Requiring the Respondent to the Order to permit the Applicant to enter their premises for the purposes of inspecting or seizing specific property, or taking copies of specific documents;
- Requiring the Respondent to disclose specific information relevant to the family law proceedings;

- Restraining the Respondent for a period of less than 7 days, from informing anyone else (other than their lawyer), that the Order has been made.

If granted by the Court, the extensive powers of the Search Order allow the Applicant to seize evidence that is required for them to prove the existence of an asset.

This may be useful in scenarios where, for example, the Applicant is aware of a safe containing a large amount of cash which the Respondent is not disclosing under their duty of full and frank disclosure. Full and frank disclosure is a crucial component in family law proceedings and you can read more about your obligations in our blog, ["What is disclosure in family law?"](#)

Or, which is becoming increasingly common, a party to the proceedings is not disclosing their substantial cryptocurrency holdings by way of full and frank disclosure. In the circumstances of cryptocurrency holdings, the Search Order would enable the seizure of personal devices such as laptops and hardware wallets. This enables seized devices to be forensically analysed by an IT cryptocurrency expert to access relevant records such as a ledger of transactions.

A cautious approach

There are high threshold requirements for Search Orders due to the severe nature of the Order. The law identifies the following requirements for relief under a Search Order:

1. A strong prima facie case;
2. Serious potential or actual damage that will be suffered by the Applicant in the event that the Order is not granted; and
3. Clear evidence that the Respondent has, in their possession, the documents or things. Furthermore, that there is a real possibility they will be destroyed before relief can be sought.

Applying for a Search Order in family law property matters

Due to the nature of the Search Order, it is usually applied for without notice to the Respondent.

Accordingly, the request for the Order must be accompanied by an Affidavit including the following information:

- A description of the property to be seized or inspected;
- The address where the search is to be undertaken;
- The reason why you believe the Respondent may destroy or alter the property unless the Order is made;
- How you will suffer damage if the Order is not made;
- The value of the property to be seized.

It is therefore important that, if practicable and safe to do so, you make notes of any relevant assets prior to separation occurring, or prior to vacating the former matrimonial home, in the event urgent injunctive applications are required in your family law matter.

What happens if the Respondent does not comply with the Search Order?

If the Respondent does not comply with the Search Order, they may be held in contempt of Court.

Further, the remedies available under the *Family Law Act* may be used. The Applicant could file a Contravention Application with the Court and seek the Court's assistance in implementation of the Search Order in the event of non-compliance by the Respondent.

Get help from a family lawyer

If you're separating and negotiating property settlement, and you're concerned that not all property is being fully or accurately disclosed, you should seek legal advice early. The E&A family law team can assist you with all aspects of your family law matter, including complications with your property settlement.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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