

Compliance with Family Law Financial Orders

Author: Ben Smith
Email: ben@smithfamilylaw.com.au
Date: Monday July 5, 2021

Once Orders about property or spousal maintenance or adult child maintenance are made, referred to as Financial Orders, they are legally binding on both parties. This is the case whether made by agreement through Consent Orders or decided by a Judge in the Family Law Courts. Non-compliance or contravention of Court Orders can have serious consequences.

Following the making of Financial Orders, there are usually steps to carry out to comply with the Orders. However, what happens if there has been non-compliance (breach or contravention) of a Financial Order? What about non-compliance with a Financial Agreement?

Enforcement Order vs Contravention Application in financial matters

If the other party does not comply with Financial Orders, there are three options to resolve the problem:

1. Negotiate and see what the hurdles are to compliance with the Orders;
2. Apply to the Family Law Courts for an Enforcement Order; or
3. File a Contravention Application in the Family Law Courts.

What is an Enforcement Order?

An Enforcement Order is sought when the other party does not comply with Court Orders and you merely seek to solve the problem and move on. Enforcement Orders are made by the Court forcing someone to do something to comply with the initial Family Law Order.

What is a Contravention Application?

A Contravention Application is made when there have been repeated breaches or instances of non-compliance, or where the breach or non-compliance is serious. The aim of a Contravention Application is to effectively punish the party for failing to comply with the Family Law Order.

Upon filing the Contravention Application with the Court, the matter will go before a Court Registrar or Judge to hear and determine the matter.

What can the Court order in an application for an Enforcement Order or Contravention Application in financial matters?

In relation to orders regarding property or spousal maintenance, the Court has discretion to enforce orders where a person is to:

- Pay money to the other party;
- Transfer real (for example, the former family home) or personal property to the other party or to sell the property; or
- Sign certain documents.

The Court can make orders for:

- An Enforcement Warrant for an enforcement officer to seize and sell property;
- A Third Party Debt Notice, which directs a third party that owes money to the breaching party to instead, pay that money to the person seeking enforcement of a Court Order. This can include directions to a party's employer in relation to their wages;
- Sequestration of property which appoints a sequestrator to collect rent, profits of a business or property and pay the amounts owing to the other party under the initial Orders;
- Appointment of a receiver or a receiver and manager to receive the breaching party's income or property and pay to the person seeking enforcement of the Order. The receiver and manager do not have the power to sell property; or
- A Registrar of the Court to sign certain documents on behalf of the breaching party to enable a transfer or sale to go through.

The Court can also order the attendance of a party to a Court Hearing or to file and produce documents and order the breaching party to pay some of the legal costs the other party has incurred in seeking enforcement of the Orders.

Enforcing Financial Agreements

Financial Agreements are private contracts between parties that remove the jurisdiction of the Family Law Courts to determine property division or the payment of spousal maintenance.

A party seeking to enforce a Financial Agreement must apply to the Court seeking that the Financial Agreement be treated like a Court Order. A Court can set aside a Financial Agreement in certain circumstances as set out here.

Certain Financial Agreements are not enforceable until certain events occur:

- If the Agreement was made before marriage or before a couple start living together, the Agreement is unenforceable until the marriage or after the parties start living together;
- If the Agreement was made during or after separation of a marriage or de facto relationship, the Agreement is not enforceable until a Separation Declaration is served in accordance with the requirements of the *Family Law Act 1975*.

If the Agreement was made after a divorce, then there is no requirement for a Separation Declaration.

Financial Agreements can be enforced like they are an Order of the Court provided that the Financial Agreement is binding.

It is vital to get legal advice about whether your Financial Agreement is likely to be held to be binding before seeking to enforce an Agreement as there may be costs consequences (one party pays some of the legal costs of the other) for unsuccessful applications to enforce a Financial Agreement.

How a family lawyer can help

Whether you are applying for or defending an application for an Enforcement Order or Contravention Application or need advice about the enforceability of a Financial Agreement, Smith Family Law can advise you about likely outcomes and how best to present your case.

Contacting Smith Family Law

03 8625 8957

info@smithfamilylaw.com.au

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.