



## Hiding assets in Family Law disputes can come back to bite you!

*The breakdown of a relationship is often a consequence of a loss of trust between the parties which can escalate further during separation and property settlement proceedings. This is particularly the case if one of the parties finds themselves in a situation where they are suspicious that the other party is hiding assets or they simply do not know as much about the financial aspects of their relationship as their former partner does.*

The Family Law Act requires that the parties to property dispute proceedings must provide “full and frank” disclosure to each other and to the Court and failing to do so can result in severe penalties.

### The Duty of Disclosure

Each party to Family Law Property Proceedings is under a “duty of disclosure” which requires that they must provide each other with all the information and documents relevant to their case including information that the other party may not know about. This includes information recorded in a paper document or stored by some other means such as in a computer storage device such as a hard drive, USB or on a disc.

It requires disclosing all sources of income, interest and property, whether both currently owned or disposed of by way of sale, transfer or gift in the year immediately before the parties separated, as well as other financial resources whether these are held in the party’s own name or are held by companies, trusts or other like structures under which the party derives a benefit.

The duty of disclosure is ongoing from the time the parties begin discussing a property settlement (even if they have not yet commenced Court proceedings) and continues until the matter is finalised, whether by agreement between the parties or by a ruling of the Court.

### What must be Disclosed

Once proceedings have commenced the Rules of the Family Court provide that a party may be called upon to formally provide disclosure in the following ways:

#### *Disclosure of their Financial Circumstances*

This duty requires that each party must complete a Financial Statement providing details of all Assets, Liabilities and Financial Resources in their sole name or held in joint names with another person. The Rules also require that an amended Financial Statement must be filed if a party’s Financial circumstances significantly change during the course of negotiations and proceedings.



## ***Production of Documents***

This provides that each party can request relevant documents from another party which are in their possession or control. The types of documents that can be requested for Production are extensive and include;

- Bank Statements
- Superannuation Statements
- Tax Returns and Pay Slips
- Property Valuations
- Insurance Policies
- Share Certificates
- Trust Deeds
- Business, Partnership or Company documents
- Title Deeds and Leases of Property

## **Disclosure Undertaking**

If a Family Law Property dispute can't be settled by negotiation and proceeds to a hearing, the Family Court requires that each party to the proceedings must sign a written Undertaking stating that they:

- (a) have read the Family Court Rules in relation to the disclosure required between the parties including the disclosure of documents;
- (b) have understood their obligations under the Duty of Disclosure;
- (c) have complied with their disclosure obligations; and
- (d) most importantly, acknowledge that any breach of this signed Undertaking may be contempt of Court.

## **Penalties for Failing to Disclose**

If a party refuses, neglects or otherwise fails to disclose Financial Information to the other party, including Financial Documents then the other party can apply to the Court for an Order compelling them to make that disclosure. Failing to comply with this Court Order is a serious offence for which there are a range of penalties that the Court may impose on the non-disclosing party including:

- (a) Dismissing all or part of their case;
- (b) Ordering them to pay a portion of the other party's costs;
- (c) Preventing them from relying on the undisclosed information or document as evidence in their case;
- (d) Imposing a fine; or
- (e) Sentencing the non-disclosing party to imprisonment for contempt of Court.



## Discovering Non-Disclosure Post Settlement

Ordinarily when the parties to a Family Law Property Settlement resolve their dispute by agreement or the Family Court makes an Order in relation to the division of their property then, subject to any right of appeal against the Order, the agreement or Court determination are binding on the parties and neither party can attempt to “revisit” the outcome at a future date.

However, if it becomes apparent afterwards that one of the parties has not provided full and frank disclosure to the other party or the Court as was required the Family Law Act provides that the aggrieved party may lodge an application to have the previous agreement or Court Order set aside and thereafter commence fresh property proceedings against the non-disclosing party.

The obligation to provide disclosure in Family Court Property proceedings is designed to ensure that assets cannot be hidden, disposed of without the knowledge of the other party or are undervalued in an attempt to better a party’s financial situation. Full and frank disclosure by all parties to the proceedings will generally result in both the parties negotiating and/or the Court making Orders with confidence that the asset pool for distribution is accurate thus enabling a fair division of the assets between them.

***At Bateman Battersby we have a number of experienced Lawyers that specialise in Family Law Property Settlement matters. If you need help sorting out who gets what when a marriage or relationship breaks down, please call [Oliver Hagen](tel:0247315899) or [Ken Gray](tel:0247315899) on (02) 4731 5899 or email us at [familylaw@batemanbattersby.com.au](mailto:familylaw@batemanbattersby.com.au) if you require further information or assistance.***