



Enforcing Family Court Orders

Obtaining Family Court Orders in regards to children's matters or the division of property of a relationship can be an involved process, particularly in disputed matters which may have taken a substantial time to conclude. It can be especially galling therefore, if the other party in the matter subsequently consistently breaks the Orders or refuses to follow them. In these situations, legal remedies such as taking out enforcement warrants and commencing enforcement or contravention proceedings are available for the aggrieved party to force the other party to comply with Court Orders, but careful consideration needs to be given to the circumstances of the breach before pursuing the available remedies.

Assessing the Gravity of the Breach

When deciding whether or not to commence enforcement proceedings much will depend on the gravity of the breach in question, and what the potential effects of the other party's conduct might be.

In a parenting case, for example, will a failure to take steps to enforce the Orders be likely to place the children at risk of some physical or emotional harm? In property cases, will the value of assets be reduced if compliance of the Orders is not sought? Or is it the case that the breach is more trivial and annoying than serious and will it be worth the time, stress and legal fees involved in enforcement?

Reasonable Excuse

Another thing to consider before launching any type of proceedings against the non-complying party is to question whether there might be a "reasonable excuse" for their breach which may provide the other party with a defence to any such action.

Under the Family Law Act (1975) a person alleged to have breached a Family Court Order has a "reasonable excuse" if:

1. they believe that breaching the Order was necessary to protect someone's health or safety;
2. the breach continued for no longer than was necessary; or
3. the person committing the breach did not understand they were breaching the Order at the time.

If the gravity of the breach is serious and it appears that the other party doesn't have a reasonable excuse for failing to comply with the Order, then pursuing the relevant available remedy is advisable to secure the benefits provided by the Court's decision.



Enforcement Warrants and Enforcement Applications

In property matters where the other party is refusing to comply with clear Orders to pay the aggrieved party a sum of money, then that party can apply for an Enforcement Warrant for Seizure and Sale of the other party's property.

This Application must be supported by an Affidavit setting out the facts and circumstances of the amount owing to the Applicant under the Orders. If successful, a Bailiff will seize the other party's property and sell it to recover the monies owed.

A less drastic remedy is to apply for an Enforcement Hearing. This option is available if the other party owes you money, is refusing to sign 'transfer of ownership' documents, or is refusing to transfer possession of an asset. The Court has a wide variety of powers available to it at an Enforcement Hearing including making injunctions and ordering payment by instalment.

Contravention Applications

A Contravention Application differs from an Enforcement Application in that the former seeks punishment or redress against the offending party, as opposed to simply implementation of the original Orders. Contravention Applications are most often made in children's matters when one party fails to comply with their obligations as regard a child without a reasonable excuse. For example, one parent not allowing the other parent to spend time with their child as required by the Orders.

In a Contravention Hearing the Court can obviously enforce, but also vary the existing Orders, or otherwise fine the guilty party as well as make a costs Order against them. In extreme cases, the Court has been known to imprison persons for non-compliance.

Other Enforcement Orders the Court can make

The Family Court has various powers and remedies to deal with matters of enforcement depending on the nature of the breach. These can include Orders:

- to garnishee a person's wages;
- to seize and sell property (including real estate);
- requiring a bank to transfer money to a party;
- preventing the expenditure of money from bank accounts or the transfer of property to third parties; and
- for the payment of legal costs and interest.

The Family Court also has power to order fines for non-compliance with obligations arising out of enforcement orders and to issue a warrant for arrest for non-attendance at an enforcement hearing. It also can imprison a party for contempt of Court.

If you are the beneficiary of a Family Court Order which the other party is failing to follow, seeking enforcement of these orders is something you should consider. If you need help or more information regarding enforcement applications or wish to discuss any family law issue, please feel free to contact [Oliver Hagen](#) or [Ken Gray](#) on (02) 4731 5899 or email us at familylaw@batemanbattersby.com.au.