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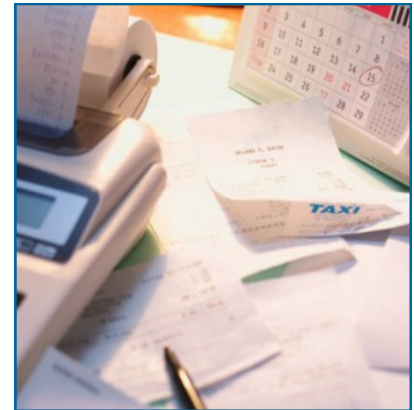
FINANCIAL DISCLOSURE IN THE FAMILY COURTS

If you have separated from your spouse, regardless of whether or not you were married, before you can finalise an agreement about the division of your assets, you must both give "full and frank disclosure" about your financial circumstances. While you and your former spouse are free to reach an agreement about matters such as the value of your home, the debts you each owe or the incomes you each receive, where there is a dispute about the value of any matter related to your property settlement, you have an obligation to provide documentation to each other proving the nature and value of those matters.

If your former spouse will not give you full details of their financial circumstances, in most cases it will not be prudent for you to enter into a property settlement. This is because without full financial disclosure it will not be possible for you to know for sure whether the agreement you are considering entering into is an appropriate one. Please keep in mind that once you have had a Court Order made or you sign a Financial Agreement that divides your assets it will be extremely difficult, if not impossible, for you to change that Order or agreement.

There are some circumstances where a property settlement can be overturned, but this is very difficult to do and you cannot assume that you will be able to change your property settlement once it has been made. If you enter into a property settlement without making all of the enquiries you can to be sure that you have a complete picture of the financial circumstances of your former spouse, you may be bound by that property settlement, even if you later find out information about your former spouse's assets that makes you feel your property settlement was unfair.

You and your former spouse must both give **current** information about your finances, even if you have been separated for a long time. The value of your assets and liabilities at the time your relationship came to an end can be important, but you must still explain your current financial circumstances. If a Family Court has to make a decision about your property settlement, they will consider the value of your assets, income and the like **at the time of the Court case**, not necessarily the value of those things when you separated.



As a starting point, under *Family Law Rules* you and your former spouse must disclose to each other:

- (a) Your income and any other benefits you receive from your employment, including income that is paid to another party, person or legal entity such as a trust or company.
- (b) Any interest you have in property (such as a house, unit or vacant land) including property that is owned by a company or trust and property you own jointly with another person.
- (c) Any other financial resources you have.
- (d) Any interest you have in a company or trust, whether or not you think you have the ability to control that entity.
- (e) Details of any assets you have sold (whether by sale, transfer,



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assignment or gift) since your separation and in the 12 months immediately before your separation; and

- (f) All liabilities you owe, whether or not they have fallen due and whether they are in your sole name or held jointly with another person.

Before you can ask the Family Court to make a property settlement decision for you, you must give full and frank disclosure. There is an obligation on both parties to give disclosure and try and negotiate a settlement before going to Court.

If after your separation you make a request of your former spouse for financial information, but that spouse refuses to give it to you, you may have the right to commence proceedings in the Family Court of Australia or the Federal Magistrates Court of Australia. Both of these Courts have the power to make Orders under the *Family Law Act 1975* and the *Family Law Rules 2004* requiring your former spouse to give you full and frank financial disclosure. If necessary, the Family Courts have the power to allow a subpoena to be issued to a bank, an employer or other relevant institution that may assist you to know the financial position of your former spouse.

After a Court case begins, further disclosure may have to be given as directed by the Court based on your particular circumstances. In most cases, the parties must exchange the following documents:

- (a) Taxation returns and assessments for the last three (3) years.
- (b) Documentation about any superannuation they hold.
- (c) For any company, trust, partnership or other legal entity in which a party has an interest, the Financial Statements for that entity for the 3 most recent financial years, including balance sheets, profit and loss accounts, depreciation schedules and taxation returns.
- (d) Other relevant documentation about a company, trust, partnership or other legal entity in which a party has an interest.
- (e) Unless the value is agreed - a market appraisal or an opinion as to value of any property in which a party has an interest.

If your former spouse refuses to give financial disclosure, even after a Family Court case has begun, serious penalties can apply. Penalties for non disclosure can include findings of contempt of Court; a requirement to pay the legal costs of the party seeking the information, the dismissal of the



whole or part of a Court case and, importantly, being denied the right to rely on evidence about an asset or liability that was not disclosed before a property settlement case proceeds to a Court Hearing.

If you require assistance with your property settlement following the breakdown of your relationship, please contact Rankin Nathan Lawyers on 4929 9333. We have accredited family law specialists available to give you advice. Simple initial advice is available free at your first appointment.