<u>Duty Of Disclosure in Family Law Property Matters:</u>
<u>*Information Sheet*</u>

(s71B *Family Law Act 1975)*

After a family separation, the legal system wants parties to financial and/or property negotiations or proceedings to be fully open with each other as to their financial situation and the financial history of the relationship. The requirement for "full and frank" disclosure is legislated by way of s71B of the *Family Law Act 1975* (Cth).

This information sheet is designed to provide a basic guide to what is meant by the ongoing duty of disclosure, why it is important and the consequences for not complying. It is important to note that the ongoing duty of disclosure requirement applies in both parenting and property matters. This information sheet is focused on property.

<u>How do people negotiate and make decisions?</u>

The best way to negotiate a resolution to any problem is to have all the information at your disposal to understand how that information affects you and make informed decisions.

It is not uncommon that during a marriage or de facto relationship that one party will have more knowledge of the financial matters than the other. Similarly, one or both parties to the relationship may have accumulated or spent money unknown to the other.

The Duty of Disclosure therefore ensures:

1. **Transparency and Fairness** – it allows both parties to have a full picture of the assets and liabilities.
2. **Informed Decision Making** – only when parties have access to all financial information can an informed decision be made.
3. **Reduced Costs and Delays** – assists in identifying areas of agreement or disagreement, it can allow matters to be more readily resolved through negotiation, mediation or otherwise minimising the amount of court time required to achieve a resolution.
4. **The Court can Make Just Orders** – without accurate information, the Court cannot make just orders. This can result in wasted court time and serious consequences for the non-compliant party, including imposing penalties and drawing adverse inferences against their case.

<u>What disclosure do I need to make?</u>

The *Family Law Act 1975* requires parties to disclose **any and all** information relevant to their property or finances. This is the case from the commencement of negotiation ("pre-action procedures") to the finalisation of the case. Initially, this typically means providing to the other party:

- All bank account statements for any accounts held by each party jointly or alone, for at least the preceding 12 months, if not longer;
- All loan accounts, credit card or other such liability statements held by each party jointly or alone, for at least the preceding 12 months, if not longer;
- Tax returns for the preceding 3 years;
- Pay slips (if relevant) for the preceding 12 months or longer; and
- Superannuation fund statements for the preceding 12 months.

Further disclosure must be made if:

- The parties, or either of them, own or run a business then there must be disclosure of documents relevant to the running of the business and to assist to ascertain the value of the business.
- The parties hold shares or managed investments.
- The parties hold shares or a directorship of a company, details of that interest must be disclosed.
- The parties, or either of them, are involved in a Family Trust, or other Trust, then documentation relating to the formation or operation of the Trust must be disclosed.

Values, Valuations and "Windfalls"

A property settlement cannot be negotiated unless parties know what the value of their assets are (less any debt attached to them). Parties are therefore required to make items available for valuation, unless there has been an agreement reached between the parties as to value.

Parties are also required to disclose any items bought or sold after separation, provided the original item was acquired during the relationship or purchased with income earned during that time. For instance, if a car owned during the relationship is traded for a new one, the value of the replacement vehicle will still form part of the property pool.

Any "Windfalls" which have been received by either party before or after separation must be disclosed. These can include winnings, severance payments, compensation payments, inheritances and so on.

What if I refuse to make disclosure?

If the case is before the Court and it can be shown that the failure to disclose information is contributing to slowing the progress of the case, the Court has a number of things it can do. These include:

- Making an order that the required information is disclosed within a given time;
- If material is still not disclosed, then the Court can find the party "in contempt" and order a variety of penalties including a monetary penalty;
- Make an order for costs against the failing party;

- Take the fact of the non-disclosure and the relevance of the non-disclosure into account when making findings in the case and final orders; and/or
- Dismiss part of the proceedings.

Whilst the *Federal Circuit and Family Court of Australia* is reluctant to make these sorts of orders, it will do so it if parties do not comply with the *Family Law Act 1975.*

Further information

A helpful Resource is the Duty of Disclosure brochure prepared by the *Federal Circuit and Family Court of Australia*: Duty of disclosure | Federal Circuit and Family Court of Australia

We can assist any person who wants to know about the process of dividing up their property after separation, with advice or information about:

- Your rights and responsibilities.
- Duty of Disclosure and documents that need to be exchanged
- The steps you might need to take next.
- The sort of property split you may reasonably expect the Court to make in your situation.
- Other professionals who can help you advance your matter.

If you have any queries, please make an appointment to speak with one or our lawyers.

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