

Complying with Final Property Orders



Article by Townsville Family Lawyer, [Jodi Dingwall](#)

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I have many clients who I negotiate (or litigate) property orders for. I always recommend they retain me until all final orders are complied with.

Even though you have received orders from the Court, there is usually a little more work to be done! The final steps in your matter require you to **comply with the orders**.

I have collected some examples from my practice as a family lawyer below, to explain what needs to be done in various situations.

Real Estate

If you are to retain a property that was jointly owned with your former partner...

If there is an order that you are to retain a property that was jointly owned with your former partner - the title of the property will need to be transferred to you. This may require the release of a mortgage that is held in joint names, the preparation of a new mortgage and a transfer being lodged at the Titles Office.

Mortgage: If there is a mortgage, usually the person retaining the property that the mortgage is secured over, will need to refinance the mortgage (debt) into their sole name. This is because - usually, pre separation, the mortgage would have been in both parties' names if it was a jointly held property.

Transfer: Conveyancing practices require the transfer to be assessed for stamp duty. Although no stamp duty is payable when the transfer occurs because of a property order or financial agreement – the stamp duty still needs to be formally assessed by the Office of State Revenue and the transfer documents marked with the amount of duty payable – even when it is 'nil'.

Most people retain their lawyer to complete transfers as there are legal documents to prepare; a stamp duty assessment must take place; and subject to whether you are assuming sole responsibility for a mortgage, a settlement with your bank (to discharge the old mortgage and register your new mortgage) will need to be arranged.

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Cash Payment

If you are required to make a cash payment to your former partner – or they are required to make a cash payment to you...

If there is an order that you are to make a cash payment to your former partner, or they are to make a cash payment to you, it is important to read and follow the order carefully.

On the face of it, this seems like something you can do by yourself without the assistance of a lawyer. However, it is important to know that a failure to pay the cash amount on the due date can result in you being charged penalty interest for every day the payment is late.

Also, if there is property you are to retain, sometimes there are default provisions included in the orders that allow for the property (or properties if there are more than one) to be sold in the event there is a default, ie. the cash payment is not paid on time. The orders may provide for other scenarios if the cash payment is late.

Superannuation

If you are receiving superannuation from your spouse...

If you have an order that you are to receive superannuation from your spouse, a certified copy of the orders will need to be provided to your spouse's superannuation fund. This is something that your lawyer can do for you.

Motor Vehicles

If the orders provide for motor vehicles to be transferred as a part of your settlement, vehicle registration transfer documents will need to be prepared and signed by you and your former spouse and submitted to the Transport department along with a copy of the Order. Lodging the transfer form along with a copy of your orders will ensure no stamp duty is payable.

Company, Trusts, Shares, SMSF (Self Managed Super Fund) Alterations

If the orders require for alteration to company structures, trusts, shareholdings, and self-managed superannuation funds – transfer forms will need to be prepared and signed, and deeds renouncing interests in trusts may need to be prepared. It would be wise to have the assistance of a lawyer and an accountant to ensure the orders are complied with properly and without tax or stamp duty implications.

The Importance of Complying with Orders

When a party fails to comply with orders, the court can set aside the previous orders (the order that has not been complied with) and make new orders.

For example, in the case of **Blackwell & Scott** [2017] FamCAFC 77, consent orders were made in 2014 for the de facto husband to retain an investment property and pay the de facto wife an amount of \$130,000 within 90 days. The de facto husband delayed and did not make the payment for 13 months, and didn't pay any interest for another few months after that.

During that time the investment property increased substantially in value. When the consent orders were made the property was worth between \$600,000 - \$650,000. However, by the time the ex de facto husband got around to making the payment, the property had increased in value to \$1 million.

The de facto wife made an application to set aside the 2014 consent orders, primarily on the basis that because of the de facto husband's delay, the outcome did not accurately reflect the intention under the consent orders. In this regard, the payment of \$130,000 in accordance with the consent orders reflected an equal division of the property of the parties. However, as the property had increased so significantly, the \$130,000 payment (even with interest) was not an equal division of the property.

The court set aside the 2014 consent orders and said that the de facto husband had defaulted in carrying out an obligation imposed on him and that in the circumstances that arose as a result of that default, it was just and equitable to vary or set aside the original order. The court then ordered that the wife be paid a greater cash payment so that an equal division of the property pool was achieved.

It is worth noting that in circumstances like these, (delay in paying) while the court can set aside the orders following a substantial increase in value of a property, it is *very unlikely* the court would set aside orders following a substantial decrease in value of a property - because this would be rewarding the party who was in default.

Moral of the story – keep your lawyer retained until final orders are complied with.

O'Shea Dyer Townsville has experienced lawyers who practice exclusively in Family Law

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