



UNDISCLOSED ASSETS – HOW DO YOU FIND THEM.

Property Settlement Disputes

You and your former partner are obliged under the Family Law Act to make a full and frank disclosure of your financial circumstances. If you or your former partner does not do so, the consequences can be drastic.

The court can assume that there is property, income or financial resources available to the party not making full disclosure, and include that in the property, income and financial resources being taken into account, and order costs (which can be very substantial) against that party.

How do you find the missing pots of gold?

It is always a question of money – sometimes a search may be unsuccessful.

On other occasions the search may be successful in finding the information but the cost of finding that information may be greater than the money or property that has disappeared.

It is important at all times to keep the search process in perspective.

There are five main methods:

1. Formal or informal disclosure of documents.

This is where each of you provide the documents which you say are relevant to the case. If done formally, it is by way of a list of documents, (a list setting out all relevant documents). This process is called disclosure. The looking and copying of those documents is called inspection.

The requirement to undertake disclosure and inspection may be because of a court order or direction or may be because of a notice given. If disclosure has not been given properly, then a number of consequences can flow including a party bringing a further application to the court and obtaining an order for costs against the defaulting party.

2. Notice to Produce.

If a party attends court, the other party can give the first party a notice to produce at court the specified documents. It is very important to comply with a notice to produce, but for a variety of reasons, these notices are not always complied with. The results of non-compliance can be an order for costs and loss of credibility against that party.



3. Answers to specific questions

One party may request that the other party answer a list of written questions. The answer needs to be provided within a certain time in writing on oath. It needs to be precise and to the point. If a party gives a different answer at a trial compared with that given in writing, it may greatly affect the party's credibility at court and may result in a cost order against that party. Usually these questions can only be asked once, so it is important to ensure that the right questions are asked.

4. Third Party Production of Documents

Sometimes a party tries to put up a smoke screen as to their true financial circumstances and relies upon the documents not being in their hands, but in the hands of a third party such as a bank or private company.

A notice or subpoena can be given to the third party requiring it to produce documents. A copy is given to the third party and to all other parties to the proceedings.

Sometimes we will use these and sometimes we will use subpoenas. We will talk to you beforehand about which process should be used.

5. Subpoenas to Produce Documents.

A subpoena is a form of truncated order requiring a person to attend court and give evidence and/or produce documents. Normally the Family Court will not allow a party to subpoena the other party to produce documents.

However, a subpoena can be used against a wide variety of third parties, for example, the partner's private company, the bank with whom the partner carries on business, an organisation like Amex or Visa with whom the partner has applied for a credit card, the partner's doctor, the partner's parents or girlfriend/boyfriend who may be hiding assets on behalf of the partner.

Subpoenas can be objected to if the documents requested are confidential in a legal sense, such as most documents held by a party's lawyer.

There are advantages and disadvantages with subpoenas. The major disadvantage is that if you are unsuccessful with the subpoena, a costs order may be made against you.





An Example



The husband swore an affidavit of documents. When the wife's solicitors looked at the documents, there were additional documents relating to a contract for the purchase of a home unit. That contract did not proceed and \$19,000.00 was left in the husband's solicitors trust account. A number of applications were made for the husband to swear an affidavit of documents that reflected all his documents. Eventually he did so. A specific question was asked of the husband and his initial answers were evasive. An application was made to the court relating to those matters as well. A costs order was made against the husband relating to both applications.

The husband finally set out the source of the \$19,000.00. He said that some of the money comes from himself, some from his company and the balance was borrowed from 2 friends.

It was not possible to trace the money which came from the company even though all the documents had been supplied by the company. The trust account for the stakeholder on the contract was obtained. The stakeholder (in order to avoid a subpoena) provided that information. On the day the cheque from the company was deposited into the stakeholder's trust account, a particular numbered cheque was shown as a withdrawal from the company's bank account.

On checking the company's ledger, this cheque was written out for an entirely different purpose. At the trial, the bank was subpoenaed to produce the cheque. It was physical evidence (with the other documents) that the husband had engaged in dishonest behaviour.

At the trial both friends were subpoenaed to give evidence and produce documents. It was suspected that each of the so called loans were dummy loans. After the production of documents, it appeared that one of the loans was genuine and the other was a dummy loan. The trial judge concluded after all these documents had been produced that the husband and his friend had engaged in an amateurish attempt to mislead the court (and decrease the amount of property available for distribution).

These events turned out to be crucial in that litigation. Because of the husband's conduct in this and similar matters, a very large costs order (over \$100,000) was made against him.





BENNETT CARROLL

Established in April, 1974, Bennett Carroll is well known as one of the largest law firms outside of the Brisbane CBD. Our well-balanced practice has over 30 years' experience in many areas of specialty including Commercial Law, Conveyancing, Family Law, Estates, Planning and Environment Law, Litigation and Personal Injury. We dedicate ourselves to quality work in these diverse areas and make a point of being accessible to our clients.

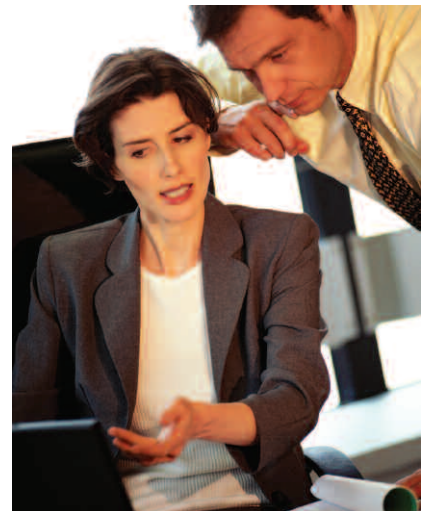
As the preferred solicitors for several National and International companies, we represent well known financiers and developers and hold a reputation for reliability that we intend to keep. Bennett Carroll prides itself on being prompt, accessible, and dealing with you in a language that you can understand; demystifying the law.

Bennett Carroll is in the process of expansion with continued focus on hands-on, up-front problem-solving.

We have offices at Upper Mt Gravatt, Stafford and Kawana.

We pride ourselves in being the market leaders in state-of-the-art technology combined with old-fashioned client service.

The solicitors in our family law section are Warren Tegg, Kate Murphy and Joanne Bennett



Warren Tegg

Warren was admitted to practice as a Solicitor of the Supreme Court of Queensland and the High Court of Australia in 1979. He ran his own legal practice specialising in Family Law and Business Advice from 1980 until 2001 before merging with Bennett Carroll. Warren has been helping people with their Family Law problems since the inception of the Family Law Act in 1976.

Warren is Department Head with the Family Law division of Bennett Carroll. He brings to the department a wealth of experience that includes some five years running his own call centre for people with Family Law problems, as well as acting as a sessional mediator with Relationships Australia Queensland from 1989 to 1994. He is also the General Manager of the Master Guidance Company, which is a counselling service owned by Bennett Carroll.

Warren has served on a number of Queensland Law Society committees during his career and is currently a member the Small Practice Management division where he has been called upon to speak at State conferences on legal practice.



Kate Murphy

Originally from Northern NSW, Kate studied at Queensland University of Technology graduating in 2005 with a Bachelor of Laws and a Bachelor of Business. She has a strong interest in Family Law, which extends to international law relating to marriage and children.

Kate was admitted to the Supreme Court of Queensland in 2006 and the High Court of Australia in 2007. Kate has over 4 years extensive experience in Family Law, as well as engaging in Criminal and Commercial Law. Kate has also had the benefit of being trained with Pauline Tesler, with a strong focus on negotiation.

Kate is a member of the Queensland young lawyers association.

Joanne Bennett

Joanne graduated from Deakin University before completing her Professional Legal Training at Bond University in 2003 and was admitted in December that year.

Joanne is an experienced family lawyer and can offer professional assistance and guidance in all types of family law matters including those involving children and financial issues, de facto relationships, pre-nuptials and parental orders.

Joanne also has extensive Commercial Law experience in vital areas such as property, company structures, franchise agreements, joint venture agreements and leases.

Family law is a very complex and emotional area of law; it will involve your whole family. This is why when things go wrong, you need an experienced team of friendly lawyers who are compassionate professionals with real life experience who understand your problems.



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