

Commercial Litigation News - Bishoy Hanna has joined the team...



We are delighted to introduce you to Bishoy Hanna, Lawyer, joining Matthew Hicks in the Commercial Litigation Department.

Bishoy has an excellent knowledge of commercial law primarily associated with commercial litigation. He has acted for litigants in various jurisdictions from the Victorian Civil and Administrative Tribunal up to the Court of Appeal. Bishoy is also experienced in taxation law and disputes, consumer and fair trading disputes, complex property and business conveyancing, corporate law, mortgages and loan agreements as well as drafting off the plan sales contracts, partnership agreements and property agreements.

Enforcement of a Court Order - Methods to Make Sure you Get Your Money

So you've gone to the trouble of getting a court order for payment of your debt, now what?

Enforcement of a court order, to recover a debt, is a part of the process that isn't often discussed when people first think about going to court. However, it is often one of the most important matters to consider both in the early stages, and when a court finds in your favour.

If the debtor simply doesn't pay you the money that has been ordered, these are some of the methods the court gives you in order to recover that money (and some limitations):

1. Warrants – register the order with the Sheriff

This is probably the most common method used by creditors and involves a registration of the order with the Sheriff's Office. The Sheriff will then attend the debtor's business or residence and take their assets (if there are any in the debtor's name), which will subsequently be sold and the proceeds will be used to pay you. There are some limitations on which assets can be seized and some restrictions on powers of entry.

2. Attachment of earnings – deduct from the debtor's wages

If your debtor is employed and earns a wage, you can apply to the court for an order that the debtor's employer deduct an amount from the debtor's wages each pay period and pay this directly to you. If the debtor changes jobs, you have to start again.

3. Attachment of debt – to the debtor's own debts or bank account

Sometimes debtors are also owed money by other

persons or maybe even have enough funds in a bank account that they just won't use to pay up. An order can be sought from the court so that the debtor's own debts become payable to you. An order could also be made to direct the debtor's bank to pay the debt out of the debtor's account. These orders are often referred to as 'garnishee' orders. To obtain an order, you will need full details of the debt.

4. Summons for oral examination – of the debtor's financial situation

Sometimes, you just don't know what the debtor's financial position is and it's difficult to know what the best approach is. The court gives you the ability to issue a summons to the debtor requiring them to attend court and answer a range of questions about their financial situation, which you can then use to decide what to do next.

These are the most common approaches to enforce a court order. Each court has similar powers, though with some differences in procedure. There are many other approaches that can be taken through the court system, such as insolvency proceedings (bankruptcy and liquidation), but this will often depend on a number of circumstances including the amount of the debt and the situation of the debtor.

Technically, bankruptcy and liquidation are not debt recovery tools.

If you would like any more information or assistance with obtaining or enforcing your court order, please contact [Matthew Hicks](#) or [Bishoy Hanna](#) on 03 9629 7411.

Bishoy Hanna - Lawyer
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7 Things Every De Facto Couple Should Know - When Moving in Together

A de facto/domestic relationship means that you are not married to each other, you are not related by family and you are living together on a genuine domestic basis. The law that applies to same-sex couples and heterosexual couples is the same.

Isn't hindsight a wonderful thing? When setting up house together it's much better to get the legal and financial issues sorted out earlier rather than later for both your sakes. Taking legal advice in the beginning when everything's rosy may give you both peace of mind. Breaking up isn't usually front of mind at the start of a relationship, however planning ahead and knowing your rights in case the relationship does break down in the future or if a partner dies will help you know where you stand in a variety of situations.

Here are some of the things that are worth considering when you enter into a de facto relationship:

1. Registered Relationships – did you know you can register your relationship with the Registry of Births, Deaths and Marriages? This is very useful in the event that you break up as it assists in establishing that you were indeed in a de facto/domestic relationship, and then you can proceed with your application for financial orders. At times, people deny that they were in a de facto relationship in order to achieve financial gain. Registering your relationship will very much assist in overcoming the initial hurdle of establishing this fact.

2. Cohabitation Agreement/Binding Financial Agreement – this sets out who brought what financial interests into the de facto relationship when you began to live together, and also sets out what will happen to the property if the

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relationship ends or one of you out-survives the other. It can also take into consideration such things as joint purchases, joint bank accounts, rent, mortgage, etc, as well as who gets the dog!! A Financial Agreement, if drafted well, removes the uncertainty of what a court may do in determining your financial division, and significantly reduces the legal costs you may incur in the future.

3. Property/Home Ownership – do you own equal shares? There are different ways to register the title of your house. It's best to get legal as well as tax/financial advice regarding the ramifications of whether you are 'joint-tenants' owning the house in equal shares or 'tenants in common' owning the house in unequal shares.

4. Children – the family law courts will deal with issues relating to children from de facto relationships in the same way as children of married couples.

5. Make a Will – this is the most important legal document to keep up to date if your relationship status changes. Get advice on what is in the best interests of those whom you wish to benefit when you die, such as who will be the legal guardian of your children, the beneficiary of your superannuation, what happens to joint assets, life insurance policies, managed funds, personal belongings.

6. Powers of Attorney – are important legal documents that everyone over the age of 18 should have prepared, in the event that you are unable to make medical, financial or personal decisions for yourself. Powers of Attorney allow you to choose who you want to make decisions for you and manage your affairs, whether it be your family, your partner, or a trusted friend.

7. Disagreements – if you break up and can't reach an agreement then you may apply to the court for a decision. It is advisable to get legal advice if this is the case as there is a list of requirements the court needs to consider regarding the actual circumstances of your relationship and whether it was indeed a de facto relationship.

This article just touches on some of the issues to consider. Please call 9550 4600 and speak with Elias Hanna, Family Lawyer for further information regarding your own situation or if you would like some advice on making a will, please ask for Lachlan Vallance, Wills & Estates Lawyer.

Enduring Powers of Attorney and why you need them

Ask yourself these questions!

- Will a trusted relative be able to manage my affairs once I lose capacity?
- Have I given that person the power to do so under an Enduring Power of Attorney (EPA)?

If you have not made an EPA and you lose capacity, approval from the Victorian Civil and Administrative Tribunal (VCAT) will be required before decisions can be made on your behalf about matters such as your medical treatment, finances and living arrangements.

What's new?

Legislative changes, which came into effect in September 2015, have simplified the process of appointing someone to make decisions on your behalf under an EPA.

1. Financial and Personal

Under the *Powers of Attorney Act 2014*, only one document is required for you, the principal, to nominate someone to make decisions on your behalf, or act as your attorney, in relation to financial and personal matters. Financial matters include the purchase and sale of property, the payment of bills and dealings with bank accounts, while personal matters include decisions such as those that relate to where and with whom you live, who can visit you and your health care.

This document, known as an EPA (Financial and Personal), has replaced two documents – the EPA (Financial) and Enduring Power of Guardianship. However, those documents signed before 1 September 2015, remain valid under the new Act.

2. Medical Treatment

An EPA (Medical Treatment), which is unaffected by the new legislation, allows a principal to appoint someone, known as an agent, to make decisions about their medical treatment.

A medical agent has similar powers to someone appointed as an attorney for personal matters. However, only a person appointed as an agent under an Enduring Power of Attorney (Medical Treatment) can refuse medical treatment on behalf of someone else according to the *Medical Treatment Act 1988*.

When does the power start?

An EPA (Medical Treatment) appointment begins only if a principal is unable to make decisions about their medical treatment. This is different from the power under an EPA (Financial and Personal) and a supportive attorney appointment which can begin immediately, upon incapacity or at another time at the principal's election.

A principal may also stipulate that the powers relating to personal and financial matters begin at different times. For example, if you wanted someone to manage your financial affairs while you were overseas, you could specify the financial power in your EPA (Financial and Personal) operate while you were away, but that the personal power to operate only when you lost capacity.

3. Supportive Attorneys

A principal also now has the power to appoint a Supportive Attorney.

Supportive Attorney appointments were introduced under the new Act in a bid to help people with disabilities make independent decisions. A Supportive Attorney is able to assist a principal make and act on decisions about financial and/or personal matters such as paying taxes, withdrawing money from bank accounts and accessing health care and support services.

How many people can you appoint?

A principal is able to nominate:

- one or more attorneys for financial and personal matters;
- one agent and one alternate agent for medical matters;
- one or more people to act as a supportive attorney.

What your attorney cannot do

Under an EPA, a principal is unable to give someone else the power to:

- vote
- make decisions about the care of their children
- make or revoke a will
- make or revoke an EPA, and
- manage the estate of the principal.

Under the new Act, anyone who is found to have dishonestly obtained or used an EPA, may be imprisoned for up to five years. The Supreme Court or VCAT may also order an attorney to compensate a principal for any losses they have caused by failing to properly undertake their duties.

Conclusion

It is extremely important for everyone over the age of 18 to make all three EPAs to ensure that the people they would like to look after their financial, personal and medical affairs are empowered to do so without obstacles in what can be an enormously stressful time for family members.

**Lachlan Vallance - Principal
LIV Accredited Specialist - Wills & Estates**

