
Third Parties and Property Disputes

Family law property disputes can have an impact which is wider than the parties to the marriage.

Since 2004, the *Family Law Act* has given the court power to make orders which:

- are binding on third parties
- affect the rights and interests of third parties

Third parties who are most likely to become involved in a family law dispute include:

- Friends and relatives of the parties. For example, parents who have loaned money to the parties or siblings who hold joint investments with the parties
- Companies or partnerships in which the parties have a shareholding or interest
- Trusts, trustees and appointors of trusts
- Executors of deceased estates in which a party might have an interest
- Banks and financial institutions
- Business partners of one or both of the parties

The court can make orders which impact on the rights of the third party. The types of orders the court can make include an order directing a third party company to register a transfer of shares from one party of a marriage or relationship to the other, or an order directing creditors to substitute the parties of a marriage or relationship in relation to a debt owed to that creditor. For example, the court can order a creditor to make a husband solely liable for a debt incurred by a wife, or vice versa.

An injunction can also be made restraining a third party from commencing legal proceedings against a party to a marriage or relationship, such as a bank taking action to recover debts pending a final property settlement.

The court will only make an order which affects the rights of a third party if the third party has been afforded procedural fairness and if the order is reasonably necessary and reasonably appropriate to effect a division of property between the parties of a marriage or relationship.

The powers are usually used by the court to help to extract assets from corporate or family trust structures to enable them to be distributed between the parties to a marriage or relationship.