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'Til COVID Do us Part

The adverse effects of coronavirus have been far-reaching physically, mentally, emotionally and financially. Is it any wonder that married couples are feeling the strain? Relationships Australia conducted a survey in May 2020 revealing 42% of those surveyed said isolation had negatively impacted their relationship. A national mediation service confirmed that people contemplating separation had increased by greater than 300%.

But what does separation during this pandemic look like? And what effect does it have in such a financially unstable period?

Many people are unaware that you can be separated while living under the same roof.

When determining whether a couple are separated the Court looks at a variety of matters, including but not limited to:-

- Whether the fact of separation has been agreed upon between the parties;
- Whether social events are attended by the couple together or separately;
- Whether the parties attend to domestic chores for themselves alone or also for the other, for example, cooking, washing and ironing;
- Sleeping arrangements;
- The management of finances; and
- Whether third parties are aware of the separation.

To apply for a divorce, parties need to be separated for a period of at least twelve months. What many are surprised to learn is that even without having been divorced, parties are still at liberty to deal with the division of their marital assets.

The majority of separated couples come to an agreement as to how to sever their financial relationship privately, without the need for Court intervention. This is, in most cases, a far better option than litigation, saving time, money and anguish. This was the case prior to this pandemic and remains so.

However, a recent (9 June 2020) decision of the Family Court (*Pericles & Hopman* [2020] FamCA 465) dealt with an Application made by the Husband to re-open his case after it had already been heard over 8 days in early to mid 2019, some 6 months prior to the pandemic. The Husband's argument was simple; the value of assets had reduced as a result of the COVID-19 pandemic and the case should be re-opened in the interests of justice. The

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Husband contended that he had evidence that the value of assets had reduced so significantly that the result of the case would be different. He also asserted that no prejudice would be suffered by the Wife in re-opening the case, and even if there were any prejudice to the Wife, it was outweighed by the significance of the change in the values of the assets and the prejudice that he would suffer if the additional valuation evidence was not admitted.

As a general rule, the date of hearing is almost always the relevant date for ascertaining the value of the asset pool and the Court did not waiver from that general rule in this case, notwithstanding the asserted impact of COVID-19. The Court noted that during a period since the Hearing the value of certain shares held by the Husband had actually increased but he did not at that time seek to re-open the case as a result of that change. The Court considered the Wife's limited income and the difficulty she would face in continuing to fund litigation. The Court also considered that if the Application were to be granted, and additional valuation evidence obtained, there was no certainty that the values of the assets would not change yet again prior to the Court ultimately providing its decision. Accordingly, the Husband's application was dismissed and he was unable to present his updated valuation evidence.

So what can be done to reduce the risks associated with a property settlement during this COVID-19 pandemic? One way might be to agree to a valuer to value the asset and that the 'payout' amount be a percentage of the net value of the property as opposed to a nominated set figure. Or, alternatively, agree to a sale of an asset by way of an auction to ensure that the market determines its value. Put simply, there are a number of ways a document dividing the assets can be drafted. At Samaras Lawyers we pride ourselves on thinking 'outside the square' and offering tailor made solutions.

If your client is in need of some family law advice, please do not hesitate to contact a member of our family law team.

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