Barry Nilsson

Expert Guidance for Financial Issues in Family Law Disputes

Checklist for Financial Advisers

Initial phase

- ☐ Prepare corporate structure or diagram where there are entities, trusts or self-managed superannuation, including:
  - ☐ Names of any entities, trusts and superannuation entitlements.
  - ☐ Roles each party or any third parties hold within each of the structures (for example, Director, Shareholder and, if so, how many shares, Appointor).
  - ☐ Key assets and liabilities held by each of the structures.
- ☐ Provide information to assist formulation of a balance sheet / property pool (for example each party's assets, liabilities and superannuation interests.
- ☐ Provide documents to support the items within the balance sheet / property pool, including:
  - ☐ Draft balance sheet for each parties' corporate, trust or superannuation interest.
  - ☐ Shareholdings or share portfolios.
  - ☐ Cryptocurrency holdings.
  - ☐ Superannuation balance printout.
  - ☐ If there is a taxation debt, loan or other liability then it is helpful to receive the documents from the Australian Taxation Office documents (for example, loan agreements).
  - ☐ Estimates of any contingent liabilities such as capital gains tax.
- ☐ Provide information regarding client's or client's family's expenses / financial commitments (e.g. budget).
- ☐ Set up meeting with family lawyer and client.

Disclosure phase

Assist client to provide the following documents:

- ☐ Bank statements for each bank account (savings, credit cards, loans, mortgages or any other accounts), for the past 12 months to the current date.
- ☐ Income Tax Returns and Notices of Assessment for the past 3 financial years.
- ☐ Three most recent superannuation statements and a printout of current superannuation entitlements.
- ☐ For self-managed superannuation funds:
  - ☐ the Superannuation Deed and the Constitution for any corporate trustee;
  - ☐ the tax returns and financial statements for the past 3 financial years;
  - ☐ statements for any bank accounts held by the fund for the past 12 months to date.
- ☐ For corporate, trust and partnership interests (where able to be obtained and disclosed):
  - ☐ the Trust Deed, Company Constitution or Partnership Agreement (as the case may be);
  - ☐ tax returns and financial statements for the last three (3) financial years;
  - ☐ the four (4) most recent business activity statements (BAS) lodged;
  - ☐ a current draft balance sheet, if prepared.
- ☐ Bank statements for the past 12 months for the entities and trusts (where able to be obtained and disclosed).
- ☐ Statements of any shares / investments owned in public or private companies together with any transactions statements regarding dealing with those interests for past 12 months to date.
- ☐ Statements for any cryptocurrency or other investments for the past 12 months to date.
- ☐ Any appraisals or valuations already obtained in the last 12 months in relation to any assets (real property, vehicles, jewellery etc).
- ☐ Any loan documents or ledgers reflecting personal loans between third parties for the past 12 months.
- ☐ Any documents verifying the purchase or sale of any items of significance in the past 12 months.
- ☐ Any documents to verify any other liabilities which are intended to be included in the property pool.

Valuation phase

- ☐ Respond quickly to requests from valuer.
- ☐ Assist with valuation process for corporate, trust and superannuation interests by:
  - ☐ Providing information necessary to obtain a fee estimate.
  - ☐ Responding promptly (within 14 days wherever possible) to requests for further information.
  - ☐ Providing a summary of each entity/business (for example, what is the purpose of the entity / business, who is involved in it, how many employees, where it operates).
  - ☐ Providing a schedule of the plant and equipment, real property and other assets owned by each entity.
  - ☐ Providing loan agreements and updated loan ledger statements where there are inter-related loans (for example, where there may be disputes between the parties about the legitimacy of those debts).
  - ☐ An analysis of key events which may assist with the provision of advice regarding timing.
- ☐ Review valuer's report promptly and liaise with family lawyer if errors identified / clarification required NB: any response to valuer's report must be made within 21 days of receipt.

Finalisation phase

- ☐ Liaise with family lawyer to ensure that any terms of settlement can be implemented as intended, by:
  - ☐ Ensuring that any applicable Capital Gains Tax, Goods and Services Tax and realisation costs are accounted for as part of the settlement.
  - ☐ Ensuring that any transfer of interests occurs in the most tax effective method possible.
  - ☐ Considering any unintended consequences, for example resettlement of a Trust and the impacts if this was to occur.
  - ☐ Ensuring that any superannuation divisions can practically occur having regard to the makeup of the assets of the superannuation fund.

GET IN TOUCH

Matt Hempstead
Principal
matt.hempstead@bnlaw.com.au
07 3099 7471