



Family Law, Creditors and other third parties

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Typically, family court proceedings involve two parties, namely married or de facto spouses in a property related matter, or two parents in a parenting matter. Additional parties may be joined to parenting proceedings in particular circumstances, such as grandparents or another person concerned with the care, welfare and development of the child or children.

In property matters, third parties may also be joined as parties to the proceedings in a number of circumstances. Some examples of third parties that may be joined to the Family Court property proceedings include:

- Creditors of the spouses or their related corporate entities
- In some cases the ATO
- Co owners of any real estate or other asset including corporate interests
- Companies or trust entities that are connected to the parties or where the parties have a financial connection

What type of orders can the Court make against a creditor or third party?

- Once they are a party to the proceedings the court can make orders that effect the rights of the third parties including
- A restraint against the third party prohibiting them from selling or encumbering an asset
- An order directed at a creditor to transfer liability of debt between the parties or to differ the debt proportions;
- An order that a company director transfer shares from one party to the other;
- The third party may be directed to do something in relation to the property of a party or both parties to the relationship.

How can you join a third party to proceedings, or how can a third party intervene in proceedings?

A third party can be joined to the proceedings by seeking an order of the court that they be joined as a party and including the relevant details of the person or entity in the initiating application or amended application. Although that sounds relatively easy to do, the third party is afforded procedural fairness as to whether they should be joined as a party to the proceedings. They would be entitled to make submissions and be heard by the Court on this issue.

A third party can apply to join the proceedings by filing a similar application. In the Family Court the most common reason for a third party seeking to join the property proceedings arises where one of the spouse parties are the “recorded owners” of property and hold the property upon trust for the third party.



An interesting case arose for determination by the Court which involved the rights of a third party. The husband sought to defeat the wife's claim by transferring his shareholding in a company to his accountant. The plan of the husband was that after the Family Court proceedings were concluded he would seek the return of the shares. After the Family Court proceedings were concluded the accountant declined to return the shares to the husband. In subsequent proceedings, the accountant was joined to the proceedings on the application of the husband and wife, who were seeking the return of the shares.

Conditions to be applied if making an order involving a third party:

Under section 90AE (3) of the Family Law Act the Court is to only make an order if, among some other considerations:

1. It is reasonably necessary to effect the division of the parties property;
2. It would not foreseeably result in the debt not being paid in full;
3. The third party is given procedural fairness;
4. In all the circumstances it is just and equitable; and
5. Other matters taken into account which may consist of, inter alia:
 - Tax implications
 - Impact on social security
 - Economic, legal and general capacity of the third party to engage in proceedings and to comply with the order

If you are a party to a proceeding and believe it is in your interest to join a third party, or if you are a third party and believe you should intervene in proceedings, speak to one of our family law lawyers who will be able to provide you with the guidance and advise you need to be in the best position to protect your interests. For more information, contact us on 1800 300 170 or email us at familylaw@matthewsfolbigg.com.au.