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LawTalk Blog



I am a beneficiary of a discretionary trust. Do I need to disclose trust documents in my Family Law proceedings?

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Date: Wednesday January 31, 2018

Scenario

Olivia and Hunter separated and are currently parties to [Federal Circuit Court](#) proceedings for [property settlement](#).

Olivia is a beneficiary to a [discretionary family trust](#). Olivia is merely a beneficiary and not an appointer or trustee of the trust. Olivia generally receives an annual distribution from the family trust of around \$50,000.

What does Olivia need to disclose about the family trust in the Federal Circuit Court proceedings?

All parties engaged in financial family law disputes are under an obligation to make [full and frank disclosure](#) of their financial situation pursuant to Rule 13.04 of the *Family Law Rules* 2004.

This means that both Olivia and Hunter must disclose to each other all information relevant to determining their income, expenses, assets, liabilities and financial resources. This includes providing documents which they have in their possession, power or control which relate to their financial situation.

The distribution Olivia receives from the family trust would be considered a financial resource by a court and accordingly she must disclose information regarding this to determine the value of that financial resource. The Rules specifically require disclosure where a party is a beneficiary of a trust.

What documentation must Olivia provide relating to the family trust?

Olivia must provide all documents she has relating to the family trust which are in her possession, power or control which relate to the distributions she receives or is likely to receive from the trust.

In our scenario, Olivia has advised Hunter of the existence of the family trust and states that she does not have any documents relating to the family trust in her possession and accordingly makes a request to the trustee of the trust for copies of trust deeds and financial statements. She then plans to provide copies of those to Hunter.

The trustee denies Olivia's request for this documentation so she is unable to provide any documents relating to the family trust to Hunter.

What happens if the trustee denies a request to provide documents?

In the case of *Masoud and Masoud* the husband was a beneficiary of a discretionary trust. He did not make any disclosure of documentation relating to the trust as he had no documents in his possession, power or control. The husband did make attempts to request copies of documentation including the trust deed from the trustees of the family trust. The trustees denied those requests.

On appeal the wife claimed that the husband had not complied with his disclosure obligations pursuant to Rule 13.01 of the *Family Law Rules* 2004. The court held in the appeal that the husband did not have access to documentation relating to the trust beyond the purpose of ascertaining whether there was due administration of the trust.

Therefore the husband did not have the right to obtain copies of documents for the purposes of disclosing them in the property settlement proceedings. The court determined that the husband had still complied with his duty of disclosure.

In the appeal, there was reference to the case of *Schweitzer and Schweitzer* [2012] FamCA 445. In this case it was stated that a beneficiary of a discretionary trust:

“has no interest in the corpus, but only the right to require due administration of the trust, and ... is entitled to access the financial documents of the trustees only in for the purposes of ascertaining that there is due administration”.

Does this mean Olivia has complied with her duty of disclosure?

Olivia has still complied with her obligation to make full disclosure even though she has not been able to provide any documentation relating to the trust. This is because as a beneficiary she is not able to possess such documentation for the purposes of disclosing it to third parties.

Relevance of trust documentation

Although beneficiaries are not obliged to provide documentation relating to the trust that doesn't mean that such documents are not relevant to the matter. The documentation could be obtained in alternate ways, such as via [subpoena](#).

If you are in a situation like Olivia or Hunter you should contact today's blog writer [Ryan Thomas](#) about your [Family Law](#) matter to obtain specialised legal advice.

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