

What's in a word? Family law orders – words really do make a difference.

A recent case highlights how careful you have to be when preparing Court Orders

In a de facto property settlement, the Order for division of the property included a requirement for the de facto wife to pay the de facto husband a fixed sum of money, and if she could not make the payment within 60 days then a house was to be sold and the fixed sum paid from the sale proceeds, with interest. The effect of the Order as a whole was that the net property pool was divided 70% / 30% between them.

The payment could not be made so the de facto wife sold the property and paid the fixed sum (with interest) in accordance with the Order.

The issue that arose was the house sold for a higher amount. At trial the value for the house was given as \$725,000 (and the 70% / 30% split calculated on that basis) but the house then sold for \$920,000. The Orders meant this increase was kept by the de facto wife.

The De facto Husband brought an application on the basis that the De facto Wife had defaulted and caused the sale of the house and by doing so she received more than 70% of the pool contemplated in the Orders. He sought Orders to remedy this.

The Court did not accept this or make any other Orders as;

- a) there was no default because the payment was made in accordance with the Order as it was written; and
- b) the Order did not say that he should receive a payment being a percentage of the total net property pool. The Order said he should be paid a fixed sum, the result of which was a 70% / 30% at the time. The effect is that any change in the value of the property would “lie where it fell”, meaning the one party would have to bear the result in any change in value, whether higher or lower.



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Crafting property Orders are not simple. There are traps and pitfalls. Call 5576 9999 to speak to an experienced family lawyer who can assist you to navigate this complex area.

<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCCA/2019/1880.html>



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