



What are ex parte orders and how can they affect my family law case?

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Family law proceedings can be a stressful and emotionally challenging experience, especially when it involves children, property, assets, or allegations of family violence. The process becomes even more difficult if your ex-partner is uncooperative and you require urgent court intervention. In some cases, one party may need to seek an order from the court without notifying the other party. These are known as **ex parte orders**, and they can play a critical role in your family law matter.

But what exactly are ex parte orders, and how can they affect your case? In this article, we'll break down what ex parte orders are, when they are used, and how they can influence family law proceedings in Australia.

What are ex parte orders?

An ex parte order is a legal decision made by the court where, in most circumstances, the other party to the case is not notified. It is usually reserved for emergencies or situations where immediate action is needed. For example, cases involving family violence, unilateral relocation or travel, sale or dissipation of assets or property or urgent concerns about a child's welfare.

The term ex parte is Latin for "from one party". This highlights that the decision is made with input from only one side of the case.

An ex parte order is temporary and generally needs to be followed up with a further hearing where both parties are present to argue their case.

When are ex parte orders used?

Ex parte orders are typically used in emergency situations where the court believes urgent orders are required to maintain a status quo, or prevent unilateral actions of one party, or protect the safety of a party or a child. Some of the most common scenarios

include:

Family violence or domestic abuse

If a person is in immediate danger due to [family violence](#), they may seek an ex parte order to obtain an injunction or protection order. These orders are designed to protect the person from further harm until a full hearing can take place.

Urgent child custody disputes

A parent may apply for an ex parte order in situations where a child is at [risk of being removed from the country](#) or is in an unsafe living situation. For example, a parent may need an urgent order to prevent the child from being taken overseas by the other parent without their consent.

Preventing the disposal of property

If one party is concerned that the other may be in the process of selling or otherwise disposing of assets (i.e money, sale proceeds from a property, transferring a property) before a [final property settlement](#), they may request an ex parte order to preserve the property during the proceedings.

Emergency medical or health orders

In certain cases, one party may seek an urgent order relating to a child's health or medical care if there is a belief that the child's well-being is at risk.

How do ex parte orders work?

To apply for an ex parte order, the applicant must file an application with the court outlining the urgency of the situation and providing evidence why they consider an ex-parte order is necessary. The court will then consider the application and decide whether to grant the order without notifying the other party.

Once the order is granted, the court will often provide a short turnaround time for a further listing date to ensure the other party has the opportunity to be heard.

The key points to remember about ex parte orders include the following:

- They are mostly temporary;

They are often granted based on urgency or emergency;

They are typically reviewed in a subsequent hearing with both parties present;

The other party may not have the opportunity to defend themselves initially, but they will get the chance to contest the order later;

If the court relies on evidence from the party seeking the order to proceed on an ex parte basis and the court is misled, there can be serious costs and consequences to the party seeking the order.

For financial matters, when the court proceeds on an ex-parte basis, they may seek from the party seeking the order what is called an "Undertaking as to Damages".

An Undertaking as to Damages is a document filed with the court which provides a promise from one party to meet the costs of any "damages" of the other party who is prejudiced by the making of the order.

Consider this example:

The party not being heard to the application is the sole trustee for a house to be sold;

This party has an offer on the house for \$1,000,000;

The other party seeks an order for the house not to be sold;

Later, it comes out in the evidence that there was consent to the house being sold initially, and then it was withdrawn;

The house eventually sells for \$800,000;

The party who sought the order to prevent the sale may be up for damages of \$200,000 (being the loss to the other party of the order being made).

Can I contest an ex parte order?

Yes, it is possible to contest an ex parte order. If you feel that an ex parte order was unfairly granted, you have the right to

challenge it.

This can be done by:

Applying to the court for a variation or cancellation of the order;

Providing evidence that counters the reasons for the order;

Attending the next hearing and presenting your case in full.

It's important to act quickly and seek legal advice if you wish to contest an ex parte order. An experienced family lawyer will be able to guide you through the process and ensure that your rights are protected.

Get help from a family lawyer

Ex parte orders are powerful legal tools that can have a significant impact on family law cases. While they are essential in urgent situations where immediate action is required to protect an individual or prevent harm, they can also have serious consequences for the party against whom they are made.

If you are involved in a family law case where ex parte orders are being sought, it is crucial to seek legal advice to understand how these orders can affect your case and to ensure that you are able to defend your rights appropriately.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.