

What is a Single Expert Witness in Property Matters?

Date: Monday June 21, 2021

The first step in working through a property settlement is to identify the asset pool of the parties; that is, all the property of the parties. This includes property in sole and/or joint names, property held in corporate entities, trusts and superannuation interests. Once the asset pool has been identified, all property must have a value ascribed to it.

If parties cannot agree on the value for particular property, the family law system requires a valuation to be obtained by an independent expert, known as a Single Expert Witness.

How is a Single Expert Witness appointed?

The Family Law Rules provide that, at first instance, parties agree on using and selecting an expert. If no agreement is reached, the Court may appoint an expert by way of an Order.

The appointment of a Single Expert Witness requires the parties jointly write to the Single Expert Witness setting out:

the property to be valued; and

any historical or current information or documents, such as financial statements, which may inform the expert.

Once the Single Expert Witness has concluded their valuation, they will prepare a valuation report and provide this to the parties. If their appointment has been Court mandated, they will provide the Court with a copy of the report.

What happens if I disagree with the valuation in the report?

Unsurprisingly, upon the publication of a report, one party is often content with the valuation, and the other party is not.

The Family Law Rules provide parties with 21 days from the date of receipt of the valuation report, the opportunity to convene a conference with the Single Expert Witness to clarify the report.

The Family Law Rules also provide the opportunity for parties to ask questions of the Single Expert Witness to clarify any queries a party may have. The Rules require:

- the questions to be in writing for the purpose of clarifying the report;
- not be vexatious; and
- not require the Single Expert Witness an unreasonable amount of work to answer.

The other party must also be provided with the questions.

Cross-examining the Single Expert Witness

If a matter proceeds to trial, the Single Expert Witness will often be crossed examined.

A party seeking to cross-examine a Single Expert Witness must arrange for, and meet the cost of the Single Expert Witness' attendance at Court.

What is a Shadow Expert?

Once a Single Expert Witness has been appointed by consent with the other party or by Order of the Court, parties will sometimes engage and retain their own expert. These experts are known as "shadow experts".

A shadow expert can be engaged for a number of reasons, including:

- to assist in preparation of questions to ask the Single Expert Witness;
- to clarify their report or questions to ask in cross-examination; or
- to prepare a further valuation report.

What to consider when engaging a Single Expert Witness?

It is important when considering appointing a Single Expert Witness that consideration is given to the following key issues:

The expert is reputable and specialises in the specific area the valuation is sought (eg, do not engage a real estate property valuer if you are seeking to have jewellery valued);

The instructions given to the expert are clear, and the expert is given all relevant documents and information required to undertake the valuation;

The expert is given a reasonable time frame within which to consider the issues and complete their report;

Where applicable, the expert is afforded the opportunity to speak with each of the parties (and their accountant if appropriate) about the issues before completing their report;

The expert be requested to release a draft of their report so the parties can identify any issues with the valuation methodology before the report is finalised.

Get help from a family lawyer

Meillon & Bright's team of experienced family lawyers are specialists in property settlements. We have significant experience and expertise engaging a Single Expert Witness or dealing with unfavourable reports from Single Expert Witnesses.

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.