

WHAT IS A “HOGAN ORDER” PAYMENT?

In property settlement matters, it is not unusual for there to be a significant disparity in income between a separating couple.

In this article, let's assume that:

- (a) a husband and wife have separated after a 30 year marriage;
- (b) the husband is a high income earner and was the breadwinner during the marriage;
- (c) the wife is unemployed and did not work in paid employment throughout the marriage, as she was the primary carer for the parties' children, and responsible for all the homemaker duties; and
- (d) there are significant savings held in a bank account in the husband's sole name and control.

Upon separating, the wife needs to retain a lawyer to help her through the property settlement process. The only problem is, she can't afford one. As the wife is unemployed and has no access to savings, she does not have the ability to pay a lawyer.

In such circumstances, the wife may be entitled to what is called a “Hogan Order” payment. A Hogan Order payment is basically a payment made into the wife's solicitor's trust account, on account of legal fees and outlays to be incurred. In this example, the payment would be made from the husband's savings account. The nature of the payment is that it is in effect treated as a partial property settlement received in advance by the wife. This means that when the parties come to calculating their net assets to be divided, the “Hogan Order” payment provided to the wife's solicitor, will be included in the net asset list, and will be deducted from the wife's entitlement when final entitlements are being calculated.

If you are entitled to a “Hogan Order” payment, but your former partner refuses to provide you with one (or more than one, as such payments can be “topped up”), you are entitled to make an application to the Family Court to seek that your former partner make the payment. As long as you are able to meet a number of pre-requisites which entitle you to a “Hogan Order” payment, then the Court will Order the payment. In such circumstances, it may also be possible to obtain a costs Order against your former partner in forcing you to commence Court proceedings to obtain the “Hogan Order” payment.

Whether or not you are entitled to this type of payment will depend on your own, very specific set of circumstances.

For specialist family law advice and all your family law needs, call Katrina Oner from Oner Family Law on (07) 3010 9742.