

# wilsons

lawyers pty ltd

family law

Level 4  
552 Lonsdale Street  
Melbourne Victoria 3000  
tel 9672 4000  
fax 9672 4040  
[www.wilsonslawyers.com.au](http://www.wilsonslawyers.com.au)  
email [wilsons@wilsonslawyers.com.au](mailto:wilsons@wilsonslawyers.com.au)

## 5 things you should know about 'family law'

### Trust & Company Assets

Assets owned in the name of a company or trust are not safe from any claim under the *Family Law Act 1975* whether it be in relation to a property settlement, spousal maintenance or child support.

Parties have a positive obligation under the Act to make full & frank disclosure of any direct or indirect interest they have in a trust or company. This includes an interest as settlor or trustee of a trust, an interest as a beneficiary, or as unit holder in a unit trust. It also includes any interest a person has in a company as a director or shareholder. The obligation of disclosure also extends to any "control" a party has over other trustees, directors or shareholders. Failing to disclose can, and has, resulted in serious adverse conclusions being made about a party's financial position and credibility in family law proceedings.

A party may appear, on the face of things, to have limited assets or income. Assets may have been acquired in the name of a trust, often a discretionary family trust. Income may have been paid to a company rather than an individual. The reasons for this may include protecting assets from judgement creditors, tax effective distribution of income between family members, or to obtain tax deductions on loan repayments relating to an asset.

For the purposes of property proceedings under the Act, if the Court is satisfied that the party controls the company or trust that owns the assets, the Court can treat those assets as if they were the assets of the party. That enables the Court to make Orders which, in reality, would result in the controlling party having to divide or sell company or trust assets between spouses by way of a property settlement.

Even where the party does not "control" the company or trust, the Court can still take into account the income received or assets owned if satisfied that the company or trust income or asset provides a financial need, or meets a financial deficiency, of a party. An example of this would be a party living in a home owned by a trust, alleviating the need for that person to personally pay rent or make mortgage repayments.

Similarly, the *Child Support (Assessment) Act 1989* contains provisions with respect to income derived by a party through a company or trust structure, and assets owned by a company or trust that the party controls. A party's taxable income will not necessarily be the basis for calculation of child support if the Child Support Agency, or the Court, is satisfied that the party's true income or financial position is reflected by the financial position of the company or trust.

It is essential that parties carefully consider these matters before entering into any negotiations or discussions about property settlements, or payment of spousal maintenance or child support. Similarly, it is essential these issues be considered and understood before entering into business or partnership arrangements which could later become embroiled in a business partner's family law dispute.

For queries about these or any other family matters please contact Wilsons' family law team on ph: (03) 9672 4000, email [wilsons@wilsonslawyers.com.au](mailto:wilsons@wilsonslawyers.com.au) or visit our website at [www.wilsonslawyers.com.au](http://www.wilsonslawyers.com.au)

September 2006