

What happens if my former partner breaches court orders?

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The Federal Circuit and Family Court of Australia can make orders in family law matters with respect to parenting arrangements and/or property and financial matters. Once orders have been made, whether interim or final, they are legally binding and enforceable.

Unfortunately, however, not everyone complies with court orders. If your former partner has ignored, refused to comply with, or deliberately breached court orders, you may be wondering what your options are and what consequences they could face.

This article explains what constitutes a breach of family law orders, the consequences for non-compliance, and the steps you can take to enforce your legal rights.

What is a breach of court orders?

A breach or contravention occurs when a person fails to comply with a court order.

The Court expects all parties to make genuine efforts to comply with its orders. Simply disagreeing with an order or believing it is unfair does not give someone permission to ignore it.

Breaches of parenting orders

Parenting orders may deal with matters such as:

- Who a child lives with;
- The time a child spends with each parent;
- School holidays and special occasions; and
- Decision-making responsibilities.

When a parenting order is made, each parent must comply with those orders. This includes taking all reasonable steps to comply with (or follow) the orders. There is also an obligation on parents to positively encourage children to comply with the orders. For example, if your child states that they do not want to spend time with the other parent, your obligation is not only to make your child available in accordance with the orders, but you must also positively encourage them to spend time with the other parent.

A person has breached an order if they intentionally fail to comply with the order or make no reasonable attempt to comply with the order. Common examples of non-compliance include:

- Refusing to make a child available for scheduled time with the other parent;
- Failing to return a child at the agreed time;
- Repeatedly cancelling visits without reasonable excuse;
- Withholding information that the orders require must be shared; or
- Interfering or failing to facilitate telephone or video communication.

Not every technical breach will justify court intervention. The Court will consider the circumstances and whether there was a reasonable excuse.

What is a reasonable excuse?

In some circumstances, it may be argued that the failure to comply with orders was justified. Examples of a reasonable excuse may include:

- A genuine concern that complying with the orders would expose a child or another person to an unacceptable risk of harm;
- A medical emergency;
- Circumstances beyond the parent's control that made compliance impossible; or
- Genuinely failing to understand the obligations imposed by the orders.

The Court will carefully examine the evidence before deciding whether a reasonable excuse existed. The Court may decide:

1. The alleged contravention was not established;
2. The contravention was established but there was a reasonable excuse, or
3. There was a contravention without reasonable excuse.

What are the consequences of breaching a parenting order?

If the Court finds that a parenting order has been breached, it has a range of powers available depending on the seriousness of the conduct. These may include:

- Ordering make-up time with the child.
- Requiring compliance with the existing orders.
- Varying the existing orders.
- Ordering either or both parents to attend a parenting program.
- Requiring one party to pay the other party's legal costs.
- Imposing fines.
- Requiring the non-compliant party to enter into a bond.
- In serious or repeated cases, imposing a term of imprisonment.

It is important to note that the Court does not need to make findings that a contravention occurred in order to make certain orders, such as orders for make-up time or orders suspending or varying the previous orders.

If the Court finds that a party has failed to comply with a parenting order without reasonable excuse, it may then impose one or more of the above penalties. However, if the Court considers imposing a fine or prison sentence, the allegations must be proven ‘beyond reasonable doubt’. This is the same standard of proof required in criminal matters.

Breaches of property orders

Property orders may include:

- Orders for full and frank financial disclosure.
- Injunctions preventing the dissipation of assets pending final property settlement.
- The sale or transfer of real estate.
- Payment of money.
- Transfer of vehicles or other assets.
- Superannuation splitting orders.

Common breaches of property orders may include:

- Failure to provide discoverable documents.
- Failure to pay money by the required date.

- Refusing to sign transfer documents.
- Delaying the sale of a property.
- Disposing assets.

How can property orders be enforced?

If your former partner does not comply with property orders, you may make an enforcement application.

Depending on the circumstances, the Court may:

- Require documents to be signed.
- Appoint another person to sign documents on behalf of the non-compliant party.
- Apply penalty interest on unpaid monies.
- Enter judgment for unpaid amounts.
- Make enforcement orders against property, such as an order for seizure and sale of property.
- Require compliance within specified timeframes.
- Order payment of legal costs incurred because of the breach.

The Court has broad powers to ensure its orders are carried out and that one party does not unfairly frustrate the implementation of a property settlement.

Related Reading: My former partner is delaying our property settlement

What should you do if your former partner breaches court orders?

If you believe your former partner has breached court orders, it is important to act promptly.

Most importantly, you should seek legal advice to help you understand your legal rights and responsibilities and explain how the law applies to your case.

We also recommend that you:

- Keep detailed records of every breach.
- Save emails, text messages and other communications.
- Keep copies of any relevant documents.
- Record dates, times and what occurred.

The appropriate response will depend on the nature of the breach. In some cases, a letter from a lawyer may resolve the issue. Family Dispute Resolution may also assist to resolve the matter out of court. In other cases, it may be necessary to commence enforcement or contravention proceedings in the Federal Circuit and Family Court of Australia.

Our experienced family lawyers can:

- Determine whether a breach has occurred.
- Advise on the most appropriate steps.
- Assist you in negotiating resolutions where possible.
- Prepare and file necessary court documents.
- Appear on your behalf at any court hearings.

Get help from a family lawyer

If your former partner has breached parenting or property orders, we recommend that you obtain specialised legal advice. At Emera Family Law, we can offer tailored advice during our free, no-obligation initial consultation.

Contact our Melbourne or Sunshine office today to book your free, no-obligation consultation and take the first step toward resolving the breach.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.