Seizure of documents or other property

This was known as an *Anton Piller* order (named after a decision of the English Court of Appeal in *Anton Piller KG v Manufacturing Processes Limited and Ors* (1976) 1 Ch 55). It is now called a search order and is available under FLR 5.19 which entitles a party to apply for such an order:

(a) requiring a respondent to permit the applicant, alone or with another person, to enter the respondent's premises and inspect or seize documents or other property;

(b) requiring the respondent to disclose specific information relevant to the case; and

(c) restraining the respondent, for a period of no more than 7 days, from informing anyone else (other than the respondent's lawyer) that the order has been made.

A search order may be (and usually is) applied for without notice to the respondent: Rule 14.04(2). For the requirements of an application without notice, see "applying for interim or procedural order without notice" in chapter 8 as to FLR 5.11. Also:

Rule 14.04(3) requires such an application to be supported by an affidavit that includes:

(a) a description of the document or property to be seized or inspected;

(b) the address of the premises where the order is to be carried out;

(c) the reason the applicant believes the respondent may remove, destroy or alter the document or property unless the order is made;

(d) a statement about the damage the applicant is likely to suffer if the order is not made;

(e) a statement about the value of the property to be seized;

(f) if permission is granted, the name of the person (if any) who the applicant wishes to accompany the applicant to the respondent's premises.

The affidavit must be served on the respondent when the order is acted on: Rule 14.04(4).

Lindenmeyer J explained search orders in *Talbot* [1994] FamCA 129 at [7] (also see [20]-[21]):

> "…[as being] to search for, inspect and remove for safekeeping (or take copies of) documents or things which are alleged by the [applicant] to be vital evidence in the action, where the [applicant] satisfies the court that there is a real risk that unless this is done the [respondent] will either destroy or hide the documents, so as to prevent their being placed before the court as soon as he or she gets wind of the [applicant's] action…to ensure that [the court's] proceedings are not rendered nugatory [futile] by the misbehaviour of a [respondent]."

Also see *Tassinari & Pesalaccio & Ors* [2018] FamCA 12 at [85]-[94].

When and what to file?
Apply for such an order where your client can prove their knowledge of the existence and location of a vital piece of evidence or valuable item of property and the respondent's failure to disclose it or make it available for valuation. Apply without notice (ex parte) if respondent is likely to conceal the item if given notice of your application. Check with your barrister first.

For your orders and supporting affidavit, see "interim orders sought" and interim injunction clauses in "affidavit of either party seeking property order" in "precedents" below.

Orders and injunctions binding third parties

This is Part VIIIAA of the *Family Law* Act (which now also covers the property of de facto partners: s 114(2A)(c)). Introduced on 17 December 2004, this amendment to the Act nullified the High Court's ruling in *Ascot Investments Pty Ltd v Harper* [1981] HCA 1 that the Family Court of Australia had no power to make orders to the detriment of third parties. In WA see Division 2 of Part 5A of the *Family Court Act 1997* (WA).

The court is now allowed, in relation to the property of a party to a marriage, to:

- make a property order; or
- grant an injunction (in marital or de facto claims);

that is directed to, or alters the rights, liabilities or property interests of a third party. See "creditors and other third parties" below.

Injunctions in a case of violence or other conflict
See "interim injunctions" in chapter "children" for injunctions for:

- personal protection of child or party
- sole occupancy of the home.