

Disclosure in the Family Court

The Australasian Lawyers Group Pty Ltd trading as Butlers, Barristers & Solicitors

As a party to a case, you have a duty to provide to all other parties and to the Court full and frank disclosure of all information and documents which are relevant to the issue or issues in the case which are in your power or control. The way we do this is by compiling a List of the relevant Documents, which we provide to the other party and to the Court

Relevance

You need only disclose those documents which are relevant to the issues at hand. Information is relevant if it is contemporary and useful in determining the issues in dispute.

For example, if you have already resolved children's issues and only a property settlement remains outstanding, it is not necessary to disclose those documents which relate to the children. If you are in doubt, as to relevance of the documents, let us know and we can assist you to determine whether documents should be included in a List of Documents to be Disclosed.

Ongoing Duty

The duty of disclosure is an ongoing duty that commences from the time you instruct us to act on your behalf (prior to any case commencing in the Court) and continues until the case is finalised. Should your circumstances change through a matter, or should you come into possession, power or control of further documents relevant to issues at hand you must **continue** to disclose those documents.

Compiling a List of Disclosed Documents

Attached is a Checklist of Documents to be Disclosed, as a guide. The Checklist is the format in which we provide your List of Disclosed Documents to the other party and the Court. It includes documents which you must disclose pursuant to the Rules, which are set out below, but also lists other kinds of documents or letters which may be relevant to your matter. If you are in doubt as to the relevance of a document, you should let us have it and we will decide whether it should go into your List of Documents to be Disclosed.



All mail to:

PO Box 460
NEDLANDS WA 6009

Nedlands (Head Office)
83-85 Stirling Hwy
NEDLANDS WA 6009

Fremantle
3/18 Parry Street
FREMANTLE WA 6160

Bunbury
119 Beach Road
BUNBURY WA 6230

Associated Firm
Malaysia
Jerald Gomez & Associates
KUALA LUMPUR
MALAYSIA

Telephone calls
Answered 24 hours

Telephone:
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If you have a large number of documents, i.e. more than a number of boxes, then it is probably necessary for us to come to the relevant premises and sort through the documents for you. If this is not the case however, it will reduce your legal costs if the documents you provide to us are in group and date order, in the same categories as the Checklist, preferably with a List setting out the description and date of each document.

What do I need to Disclose?

The Family Court requires a party to a financial case to make full and frank disclosure about their financial circumstances. This requires detailed disclosure of:

- All income or earnings (whether paid direct to you or not)
- All interests in any property or in any legal entity (i.e. any corporation that is not a public company, any trust, partnership, joint venture business or other commercial activity) that is fully or partially owned or **controlled** by you, including details of any income earned by that legal entity (even if the income is paid to someone else)
- All your other financial resources;
- Any trust of which:
 - you are an appointor or trustee;
 - you, or your child, or spouse or de facto spouse is an eligible beneficiary as to capital or income;
 - you, or your child, or spouse or de facto spouse is a shareholder or director of a corporation which is an eligible beneficiary as to capital or income;
 - you have any direct or indirect power or control;
 - you (or a corporation in which you or your child or spouse or de facto spouse is a director or shareholder) have the direct or indirect power to remove or appoint a trustee;
 - you (or a corporation in which you or your child or spouse or de facto spouse is a director or shareholder) have the power (whether subject to the concurrence of another person or not) to amend the terms;
 - you (or a corporation in which you or your child or spouse or de facto spouse is a director or shareholder) have the power to disapprove a proposed amendment of the terms or the appointment or removal of a trustee;

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- Any property disposal (this may be by sale, transfer, assignment or gift) whether by you personally or through a person or entity you control or have an interest in, that may affect, defeat or deplete a party's claim in the case:
 - In the last 12 months immediately before the separation of the parties, or
 - Since final separation except any disposal of property made with the consent or knowledge of the other party or in the ordinary course of business.
- All liabilities and contingent liabilities whether of yourself or any relevant legal entity.

Specifically the documents you must disclose are:

Property

The documents that the Court would consider as appropriate to be exchanged in a property case include:

- Documents about any relevant superannuation interest, including:
 - the completed Superannuation Form;
 - for a self managed superannuation fund, the trust deed and the last 3 financial statements;
 - the value of the superannuation interest, including how the value has been calculated and any documents working out the value
- For a corporation (Business), trust or partnership where the party has a duty of disclosure under Rule 13.04:
 - any Business Activity Statements for the 12 months ending immediately before the first court date;
- For the party or a corporation, it's most recent annual return, listing directors and shareholders and the corporation's memorandum and articles of association;
- For any trust, the trust deed;
- For any partnership, the partnership agreement, including amendments;
- Unless the value is agreed, a market appraisal or valuation of any item of property in which a party has an interest.

Maintenance

The documents that the Court would consider as appropriate to be exchanged in a maintenance case include:

- The party's taxation return and taxation assessment for the most recent financial year;

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- The party's bank records for the previous 12 months;
- If the party receives wage or salary payments, the party's three most recent pay slips;
- If the party owns or controls a business, the Business Activity Statements for the previous 12 months;
- Any other document relevant to determining the income, expenses, assets, liabilities and financial resources of the party.

Child Welfare

The documents that the Court would consider as appropriate to be exchanged in a child welfare case include:

- Medical Reports;
- School Reports;
- Letters;
- Drawings;
- Photographs

Importance of Disclosure and Implication of Non Disclosure

Full and Frank disclosure is fundamental in order for the Family Court to make a just and equitable decision in relation to your family law matter. Throughout the court proceedings you are required to acknowledge your understanding of and compliance with your obligation of disclosure. If your matter relates to a property settlement or maintenance, you will be required to file a Form 13 Financial Statement when you commence proceedings in the Family Court. Within the Financial Statement you will have to sign an Affidavit attesting that you understand your duty of disclosure and have given full and frank disclosure to the best of your knowledge.

If your court matter does not settle before a pre trial conference, you will be required to give an Undertaking that:

- To the best of your knowledge and ability you have complied with the duty of disclosure; and
- Acknowledge that breach of the undertaking may be contempt of court;
- You must not make a statement or sign an Undertaking if you know or should reasonably know that it is false or misleading.

Apart from having the authority to make orders in relation to a fine or imprisonment for contempt of court, the Court can also make costs orders against you, if it is of the view that you have not complied with the obligation of disclosure in an effective and timely manner.

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