



Duty of Disclosure in Family Law Cases

FAMILY COURT OF WESTERN AUSTRALIA

This brochure will tell you

- What the duty of disclosure involves.
- Why you will need to comply with the duty and what will happen if you do not.
- What your obligations are in a financial case.
- Information about financial statements (Form 13).
- Where you can find more information.

What is disclosure?

The duty of disclosure is your duty to provide the other parties in your case with all information and documents which are relevant to the issues in the case.

If your situation changes or more documents are created or come into your possession, you will need to make sure that the other party knows about them and the information they contain.

The duty begins with the pre-action procedure, before you make an application to the court and continues until your case is finalised.

You will be asked to sign an undertaking stating that you have read and understood your obligations under the duty of disclosure.

The Court will look at whether you and the other party have complied with the duty of disclosure when deciding the outcome of your case.

The Family Law Rules 2004

The complete list of rules for the duty of disclosure can be found in the *Family Law Rules 2004*. Copies of these rules are available from the Commonwealth Law Publisher or from the Family Court of Western Australia website www.familycourt.wa.gov.au, under Legal Resources, Legislation.

Chapter 13 of the Rules deals with the duty of disclosure.

Disclosure of documents

Chapter 13 of the Rules explains different ways you may be required to comply with your duty of disclosure to the other parties and the Court.

This usually happens by exchanging documents throughout the proceedings.

There are some rules about how this can take place:

- production of documents [Part 13.2];
- inspection of documents [Part 13.2];
- copying of documents [Part 13.2];
- list of documents [Rule 13.20];
- orders for disclosure [Rule 13.22];
- answers to specific questions [Part 13.3].

As your case goes on, more documents will be created, or come into your possession. You will need to make sure that these rules are followed.

If you have any questions about what documents you need to show to the other party, when you need to show them to the other party, or how it is best to do so, you should ask your Client Administration Officer or court staff.

Important Information for financial cases

A financial case is any case where there are issues involving property distribution or maintenance.

It is very important in these situations that both parties are totally honest and open about their financial situation.

There are additional rules which apply in cases where financial issues are involved.

You should carefully read Chapter 13 of the Rules to understand your obligation to disclose and then get legal advice about:

- your duty of disclosure;
- your obligation to make full and frank disclosure in financial cases;
- the effect of the undertaking as to disclosure; and
- the terms used in this brochure.

Full and Frank Disclosure (Rule 13.04)

Rule 13.04 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 the party or not).
- All interests in any property or in any legal entity that is fully or partially owned or controlled by the party, including details of any income earned by that legal entity (even if the income is paid to someone else).

A legal entity is:

- any corporation that is not a public company;
 - any trust;
 - any partnership; and
 - any joint venture business or other commercial activity.
- All financial resources of the party.
 - Any trust where as:
 - an appointor;
 - a trustee;
 - a director; or
 - a shareholderof any legal entity the party has any direct or indirect power or control, including to remove or appoint a trustee or approve or disapprove the amendment of the terms of the trust.
 - Any trust in which the party, the party's child, spouse or de facto spouse or a corporation of which any of these persons is a shareholder or director is a beneficiary of capital or income.
 - Any property disposal (this may be by sale, transfer, assignment or gift) by the party (including any property controlled by a relevant legal entity referred to in paragraphs 2, 4 or 5) that may affect, defeat or deplete a party's claim in a financial case:
 - in the 12 months immediately before the separation of the parties;
 - since the final separation of the parties except any disposal of property made with the consent or knowledge of the other party; or
 - in the ordinary course of business.
 - All liabilities of the party or any relevant legal entity.

Financial Statements (Form 13)

As part of your duty of disclosure you are required in cases involving financial issues to file a Financial Statement (Form 13).

Where completing the form does not provide sufficient information to enable you to provide full disclosure you are required to also file an affidavit with the other information.

If your financial circumstances change after you file the Financial Statement you must file an amended statement 7 days before any of the following court events:

- conciliation conference;
- readiness hearing;
- case assessment conference;
- trial; or
- when you seek consent orders.

Completing a Form 13 does not mean you can ignore your ongoing obligation to follow the rules of disclosure

Undertaking regarding your disclosure

Attached to the back of this brochure is a 'form of undertaking' which you will need to remove, complete and file at the appropriate time.

The undertaking must be filed either:

- seven days before the readiness hearing; or
- If no readiness hearing is held, seven days before a trial.

By signing the undertaking you are acknowledging that you:

- have read parts 13.1 (Disclosure between parties) and 13.2 (Duty of disclosure – documents) of the rules; and
- are aware of your duty to the Court and each other party (including the Independent Children's Lawyer) to give full and frank disclosure of all information relevant to the issues in the case, in a timely manner.

You must also:

- undertake 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.

Penalties

If you fail to comply with your duty to disclose, the Court may:

- refuse to give you permission to use that information or document as evidence in your case;
- stay or dismiss all or part of your case;
- order costs against you; or
- fine you or imprison you on being found guilty of contempt of court for not disclosing the document or for breaching your undertaking.

Seek legal advice

You should get legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. A lawyer can also help you reach an agreement with the other party without going to court.

You can get legal advice from a:

- Legal Aid Office;
- Community Legal Centre; or
- Private law firm.

Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

Personal safety

If you have any concerns about your safety while attending court, please call 08 9224 8222 before your court appointment or hearing. Options for your safety at court will be discussed and arrangements put in place. By law, people must inform a court if there is an existing or pending family violence order involving themselves or their children.

Need more information?

For more information about Family Dispute Resolution, or to find your nearest Family Relationship Centre:

- go to www.familyrelationships.gov.au; or
- call the Family Relationship Advice Line on 1800 050 321, the line is open from 8:00am to 8:00pm Monday to Friday, and 10:00am to 4:00pm on Saturdays.

For more information about the Family Court of WA, including access to the legislation, forms or publications listed in this brochure:

- go to www.familycourt.wa.gov.au;
- call 08 9224 8222 or 1800 199 228; or
- visit the Family Court of WA registry.

Who else can help?

- **Legal Aid WA**
www.legalaid.wa.gov.au
1300 650 579
- **Community Legal Centres Association of WA**
www.communitylaw.net
08 9221 9322
- **Law Society of Western Australia**
www.lawsocietywa.asn.au
08 9322 7877
- **Aboriginal Legal Service of Western Australia Family Law Unit**
www.als.org.au
08 9265 6666 or 1800 019 900
- **Law Council of Australia – Family Law Section**
www.familylawsection.org.au
02 6246 3788

This brochure provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Family Court cannot provide legal advice. The Family Court of WA respects your right to privacy and the security of your information.
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Undertaking regarding disclosure

This Notice is filed in accordance with Rule 13.15 of the Family Law Rules 2004.

File No.: _____
[INSERT FILE NUMBER]

I _____
[INSERT NAME]

have read Parts 13.1 and 13.2 of the Family Law Rules 2004;

am aware of my duty to the Court and to each other party (including any Independent Children's Lawyer) to give full and frank disclosure of all information relevant to the issues in the case, in a timely manner; and

undertake to the Court that, to the best of my knowledge and ability, I have carried out and complied with my duty of disclosure.

I understand the nature and terms of this undertaking and that if I breach the undertaking, I may be guilty of contempt of court.

SIGNATURE OF PERSON MAKING THE STATEMENT

FULL NAME OF THE PERSON MAKING THE STATEMENT

