



# What is duty of disclosure in family law?

**Date: Monday February 3, 2020**

When a marriage or de facto relationship ends, and a property settlement is required, the parties are required by the Family Law Rules to provide full and frank disclosure about their financial circumstances. This is referred to as your duty of disclosure.

The duty to provide full and frank disclosure is a continuous obligation. It commences at the beginning of settlement negotiations and continues until the matter is finalised.

The process does not need to be as onerous as it feels. There are ways that disclosure can be compiled in an organised and quick manner to reduce the “life admin” task so close to separation.

## What does disclosure actually involve?

Providing full and frank disclosure involves providing the other party with copies of all relevant documents or information in relation to a party's income, earnings, interest, property (held in either individual or joint names or within a corporate or trust structure) and any other financial resources.

This means providing copies of various documents, including but not limited to:

payslips if employed, or business activity statements if self-employed;

employment or service contracts;

bank account and credit card statements;

loan agreements;

trust deeds and company constitutions;

company and trust meeting minutes; and

dividend and share-holding statements.

## **What if my former partner refuses to disclose?**

If your former partner refuses to disclose a relevant document or information, or you have strong suspicions that they are not disclosing all relevant documents, there are a number of methods that can be deployed to compel your partner (or another party such as an accountant or financial advisor) to disclose.

These include:

issuing a subpoena to an individual or a business to produce documents;

obtaining an order from the court compelling disclosure by a specific date; and

making a request, under the Family Law Rules, for the party to produce the documents by a specific date.

## **What if I or the other party do not disclose everything?**

If you or your former partner refuse to provide disclosure of relevant documents or information, the Family Court has extensive powers and may:

make an order for the person who has failed to provide disclosure to pay the legal costs of the other party (either in full or in part);

refuse to allow the non-disclosing party to rely on a document if it has not been previously disclosed to the other party;

dismiss all or part of the non-disclosing party's application;

find the non-disclosing party guilty of contempt of court and issue a punishment or a fine or a term of imprisonment;

if non-disclosure is only revealed after the court has made full and final orders, set aside the order (even if the non-disclosure is discovered several years later).

## Duty of disclosure in parenting matters

The [duty of disclosure also applies to parenting matters](#).

This includes disclosing copies of relevant documentation or information related to the care and welfare of the child or children and the parenting capacity of the parents. This includes copies of:

medical reports;

school reports;

photographs;

copies of your childrens' drawings and diaries; and

notes and letters.

## Undertaking to the court regarding disclosure

In all family law matters involving property and parenting, parties must sign and file with the court, an undertaking that confirms they have understood and complied with their duty of disclosure.

This undertaking takes the form of an affidavit. A breach of this undertaking is contempt of court and will have serious consequences.

## Managing your family law settlement effectively

If your former partner is withholding documents or other information required under their duty of disclosure and your matter is before the court, there are processes via the court rules that Meillon & Bright can pursue on your behalf to obtain the missing information.

Such examples include but are not limited to:

filing an application in the court (supported by an affidavit) to seek an order for the other party to produce the documents;

filing a subpoena to a third party to obtain copies of the documents;

sending a notice to the other party to produce the documents;and/or

sending a notice to a third party (not involved in the property settlement) to provide the documents.

Duty of disclosure is taken very seriously by the courts. It is crucial that you understand your both your entitlements and your obligations. Engaging an experienced family lawyer to work with you will ensure you don't get caught out by the rules of disclosure.

## Get help from a family lawyer

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*The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.*