



## What is disclosure in Family Law?

**Date: Tuesday August 20, 2019**

Usually, before we make big decisions, we ensure we are fully informed. Family Law applies the same principles, as set out in [Rule 13.04 of the Family Law Rules 2004](#) or Rule [24.03 Federal Circuit Court Rules 2001](#). These principles are referred to collectively, as 'disclosure' or your 'duty of disclosure'.

Before an offer can be made or even considered between you and your former partner, full and frank disclosure must be completed. Non-disclosure of a material issue which alters a party's financial position may lead to Orders being set aside on the basis of fraud. The behaviour of deliberate non-disclosure could also be considered contempt of the court which could include a penalty of imprisonment.

## Duty to disclose

You have a duty to provide full and frank disclosure to the other party and the court. Once a party initiates any Family Law proceedings, they will often seek interim Orders for standard disclosure to be made in accordance with 'Annexure A'.

Annexure A is a standard non-exhaustive list of basic documents which applies to most [financial or property cases](#). It includes documents such as:

- bank statements'
- superannuation statements;
- payslips;
- tax returns; and
- social security payments etc.

This means that any information or documents you have in your possession or control, relating to Annexure A, must be disclosed to the other party.

## **What else, besides documents, do I need to disclose?**

You are required to disclose all information relevant to any issue in your matter. An issue may be your inability to continue your current occupation due to a deterioration in your health. Accordingly, you will have to disclose all information relating to this issue such as medical records, doctors' letters and so on.

## **Duty of disclosure in Family Law lasts for the duration of your matter**

In addition, your duty of disclosure is an 'ongoing' obligation and does not cease once you have provided your initial disclosure, or the disclosure set out in Annexure A.

Your obligation to provide ongoing disclosure ends when the matter ends, either through an agreement between the parties or a decision from a court. Until final orders from the court, the duty of disclosure continues. For example, if you opened a new share trading account recently after you separated and this was funded from your winnings at the races, this account and any balance therein will have to be disclosed to the other side.

## **My former partner has bank accounts he/she didn't disclose!**

If disclosure has been provided and you still suspect your former partner has bank accounts they did not disclose, we are able to subpoena their bank statements. The difficulty here lies with knowing which bank to subpoena. There are several smaller banks out there as well and the legal costs associated with drafting court documents, serving the documents and finally inspecting the documents can become prohibitive.

In Family Law proceedings a party is only granted 5 subpoenas. If a party wishes to issue more subpoenas, they will have to seek leave from the court to do so. Usually leave will be sought for a further 5 subpoenas. Issuing subpoenas without having somewhat of a genuine belief of which bank the funds might be held in could be an expensive process and we will only advise clients to do so if they are confident that the undisclosed account exists.

Prudent and experienced Family Law solicitors will usually draft a clause in the interim or procedural orders to include disclosure of any document which is requested or particularised in writing. Therefore, if you are aware of any undisclosed bank or superannuation accounts, then we are able to request the disclosure be provided without the expense of issuing the subpoena.

## **Do I have to disclose interest in a Family Trust?**

Yes, interest in a Family Trust or any Trust for that matter is required to be disclosed regardless of whether you are just a trustee, beneficiary, or appointer. Disclosure is required to the extent that even if you are a shareholder or director of a corporation which is the beneficiary of a Trust.

# Does disclosure only apply to financial or property cases?

No.

Disclosure is also required for parenting cases. Disclosure relevant to parenting matters could include:

- school reports;
- information regarding a parent's work commitments; and
- medical or expert reports in regards to the child, and so forth.

**Final Note:** You and your solicitors have a positive obligation to provide full and frank disclosure. If you provide certain disclosure to your solicitors, your solicitors will be ethically bound to disclose that information to the other side, or to the court even if they have not requested that information.

## Hall Payne no longer provides services in family law

If you require assistance with your family law matter, we recommend you contact the relevant Law Society in your State or Territory for a referral:

- **Queensland:** [1300 367 757](tel:1300367757)
- **NSW:** [02 9926 0333](tel:0299260333)
- **Victoria:** [03 9607 9311](tel:0396079311)
- **Tasmania:** [03 6234 4133](tel:0362344133)
- **South Australia:** [08 8229 0200](tel:0882290200)
- **Western Australia:** [08 9324 8600](tel:0893248600)
- **Northern Territory:** [08 8981 5104](tel:0889815104)
- **ACT:** [02 6274 0300](tel:0262740300)

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