

Pre-action procedures before filing in Family Law Courts

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E&A Lawyers has made the decision to no longer provide family law services. While we no longer take on any new family law matters, we are happy to assist by referring you to lawyers specialising in this area. Please don't hesitate to contact us if you would like a referral.

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Before initiating Court proceedings in the Family and Federal Circuit Court of Australia, the parties should comply with all pre-action procedures unless they are exempt.

What are pre-action procedures?

Pre-action procedures have the objective to encourage the exchange of full and frank disclosure between the parties, before any Court application. The aim is to help the parties resolve their differences quickly and fairly, avoiding Court proceedings where possible.

The value of pre-action procedures

Unless any of the exemptions outlined below apply, we strongly encourage the parties to participate in pre-action procedures early in their matter. In most cases, the family law matter can be resolved by alternative dispute resolution without the intervention of the courts.

Keeping your matter out of the Court system is beneficial to all parties. It's a faster process, less stressful (for former partners, parents and children) and is much more cost-effective.

If the matter cannot be resolved by pre-action procedures, there is often still the benefit of narrowing the issues in dispute.

Pre-action procedures in parenting matters

In parenting matters, before commencing Court proceedings, unless exempt (see below), parties must follow the following steps:

Step 1:

Attend a Family Dispute Resolution Mediation.

Step 2:

If your matter is not resolved at the mediation, then the party applying to Court must give the other party written notice of the intention to commence court proceedings. They must set out the issues in dispute and provide a genuine offer to resolve the claim.

Step 3:

The party receiving the notice of the other party's intention to commence court proceedings should reply in the timeframe requested by the other party stating whether their offer is accepted or rejected.

Step 4:

If no agreement is reached, Court proceedings can be started.

What applications are exempt for parenting matters?

- Urgent cases;
- Matters involving allegations of child abuse, family violence, or risk of family violence;
- Where one party refuses to negotiate.

Pre-action procedures in property matters

In property matters, before commencing Court proceedings, unless exempt (see below), parties must follow the following steps:

Step1:

Comply with your duty of full and frank disclosure.

Step 2:

Participate in dispute resolution.

Step 3:

If dispute resolution is unsuccessful, then the party applying to Court must give the other party written notice of the intention to commence court proceedings. They must set out the issues in dispute and provide a genuine offer to resolve the claim.

What applications are exempt for property matters?

- Divorce proceedings.
- Child support.
- Where there is a genuine concern that the other party will attempt to defeat the application if there is prior knowledge. For example, an urgent injunction which needs to be sought.
- Where one party refuses to negotiate.

Get help from a family lawyer

Finalising separation from your partner, in an amicable way, will deliver better results for all involved. However, we understand that sometimes this is not possible. If you're having difficulty negotiating your property settlement or parenting arrangements, please get in touch with one of our family lawyers, to talk through your options.

Contacting E&A Lawyers

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For more information or to arrange a consultation with a lawyer, you can call or email us.

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