

What is disclosure in family law?

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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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Disclosure is a term widely used in the law. In very basic terms, disclosure in family law means the obligation for parties to provide all information relevant to their family law matter to each other. It's sometimes referred to as "full and frank disclosure". This blog will outline why disclosure is important and provide information on some of the common misunderstandings and frequently asked questions about what disclosure is and why disclosure is required in a family law matter.

New duty of disclosure directions introduced by the Family Courts

On 1 September 2021, the Federal Circuit Court and Family Court merged and formed what is now known as the Federal Circuit and Family Court of Australia. They produced a new set of directions in how disclosure is handled in family law matters. This information can be found under section 6 of the *Federal Circuit and Family Court of Australia Act 2021.*

Previously, there was a duty of financial disclosure. During family law court proceedings and negotiations about financial matters like property settlement, both parties had to provide to each other, all relevant documentation about their financial circumstances and had to do so in a timely manner.

The changes to the Act now provide for disclosure in parenting matters too.

This obligation is called a "duty of disclosure". The Family Law Rules state that the aim of disclosure is to help parties focus on genuine issues and reduce costs.

Duty of disclosure begins when parties start negotiating with each other and continues until the matter is finalised. The new rules surrounding duty to disclosure are clear that the obligation to provide full and frank disclosure applies to all family law matters.

Duty of disclosure obligations

Technically speaking, your obligation is to provide full and frank disclosure about anything that is relevant and needs to be considered in your family law matter. The court will typically expect the disclosure of anything that relates to the parties' financial positions, including but not limited to:

- bank accounts;
- credit cards;
- payslips and earnings received;
- tax returns;
- shares portfolios;
- superannuation;
- properties either solely or partly owned; and
- companies either solely or partly owned.

Disclosure can also include an obligation to provide information such as:

- financial resources;
- family trusts or the details of a trust a party is a beneficiary of; and
- shares in a unit trust.

Why is duty of disclosure important?

Duty of disclosure is a requirement under *Rule 6.1 of the Family Law Rules 2021.*

It is an important process as it is used to ensure that all parties are provided for in any Orders or Judgements made by the Court and there is transparency regarding the asset pool so that any split does not unknowingly prejudice either party.

When does my duty of disclosure commence?

Disclosure is an ongoing obligation and duty throughout your family law proceedings. It starts before any Court proceedings are started and continues until proceedings have finalised.

You will typically be requested to disclose information and/or documents at the beginning and at key stages of a matter. However, if there is a major change to your assets or parenting arrangements (ie. purchase of a car, boat or property or issues arising at the

children's schools), disclosure of those changes should be provided as soon as possible.

The difference between “full and frank disclosure” and an “undertaking as to disclosure”

Full and frank disclosure means that you have provided everything related to your matter and there are no relevant documents or information that you have not disclosed.

If your matter ends up in the Federal Circuit and Family Court of Australia you will have to file an undertaking as to disclosure. This confirms that you are aware of the duty of disclosure that you owe to the Court and that you have, to the best of your knowledge and ability, complied with your duty.

What if I know my former partner has not disclosed everything?

At any time during your matter, you can ask another party for disclosure:

- of information or documents that you are aware of, that relate to proceedings;
- to update figures already disclosed but which have changed; or
- provide information relating to a specific asset.

If they do not provide the necessary disclosure, you may be entitled to file a subpoena which would then compel a person to produce documents or give evidence at a hearing.

A failure to disclose financial information can result in an application or Court Order to be set aside by the Court.

Is disclosure just so you can rack up fees?

Short answer, no.

In conversation with a number of family lawyers recently, this question was discussed and appears to be a common question asked by clients. Disclosure is a necessary step that has been outlined by the Court. Lawyers have an obligation to the Court to ensure that clients comply with their duty to disclose.

If you do not provide full and frank disclosure relevant to the proceedings, lawyers have obligations to take appropriate action, including ceasing to act for the client.

My matter only relates to parenting. Why do I need to provide disclosure?

The new rules are clear in relation to parties' obligation to full and frank disclosure. Even if the matter relates to parenting matters only, you must disclose.

Parenting matters do not have specific documents that a client must provide. Instead, you are required to provide documents that are relevant to an issue in dispute in your parenting matter.

This might include, for example:

- a child's medical reports
- letters and communications from a child;
- school reports
- information related to family violence including intervention orders; and
- a party's criminal records.

Can I object to something requested in disclosure?

The issue for any obligations in your duty of disclosure is one of relevance. Any request for disclosure of documents or information needs to be relevant to the family law matter.

There cannot simply be blanket requests for disclosure. If there is a specific request which is irrelevant and requested to create undue delays or stress/pressure on a party, you have the right to request further information as to the relevance and potentially object to a request.

What happens if I don't provide full and frank disclosure?

If it is found that you have not provided full and frank disclosure or that you have done any of the following:

- Withheld disclosure;
- Suppressed disclosure;
- Doctored disclosure;
- Attempted to hide an asset; or
- Attempted to dispose of assets,

there are serious implications, including cost orders against you, fines and even in some cases imprisonment.

Get help from a family lawyer

If you have queries about your own obligations related to disclosure or you believe your former partner is not providing full and frank disclosure, our family law team can assist you to ensure you receive a fair and just result.

Contacting E&A Lawyers

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

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