



Property Orders Kit

For people seeking help with financial disputes
FAMILY COURT OF WESTERN AUSTRALIA

Is this kit for me?

Yes - if you are thinking about asking the Family Court to help you resolve a dispute about property or financial issues. If you need help with a matter concerning children, you should also read the Parenting Orders Kit and the brochure series, Parenting Cases in the Family Court.

No – if you have reached an agreement with the other party about your property. (Ask Court staff for the Consent Orders Kit, which is also available at www.familycourt.wa.gov.au).

What is property?

Property can take many forms. For example it includes real estate, motor vehicles, furniture and investments. In some cases superannuation is treated as property. For more information about property and other financial cases in the Family Court, see the brochure series 'Financial Cases in the Family Court'.

Do I need to go to court?

It is usually better to resolve problems away from the Court.

If you are a prospective party you must follow the Family Court's pre-action procedures. Read the separate brochure called "Before you file – Pre-action Procedure for Financial Cases".

Pre-action procedure steps include:

- participating in dispute resolution services such as mediation, counselling, negotiation, conciliation or arbitration;
- writing a letter to the other party setting out your claim and exploring options for settlement; and
- complying, as far as practicable, with the duty of disclosure.

Anyone who does not comply with these requirements (unless exempt) risks serious consequences, including costs penalties.

What forms do I need?

There are three forms in this kit:

- Form 1 Initiating Application;
- Form 13 Financial Statement; and
- Affidavit.

The affidavit is used to provide the evidence in support of your Initiating Application.

If you or the other party have an interest in a superannuation fund you will also need *either* the last two member statements from the fund **OR** a Superannuation Information Kit. This is available from the Court or at www.familycourt.wa.gov.au (*The Superannuation Information Kit should be used only if you were married to the other party – it does not apply to de facto couples.*)

Instructions for filling out the forms and affidavit are on the next page.

Completing the Form 1

Work your way through each part of the Form. It does not have to be typed but please print very neatly.

Ask Court staff if you do not understand what a question means, but remember they cannot tell you how to answer a question or give you legal advice.

What orders should I ask for?

Write the orders you want in 'Part A' of the Form 1. You may need to attach an extra page to the Form. Some examples are attached to the end of this kit.

Sometimes people want orders to be made to deal with arrangements until the final decision is made. These are called interim orders.

If you want any interim orders you need to complete question 3 – Interim or procedural orders sought on the Form 1 as well as question 2 – Final orders sought.

Completing the Financial Statement

Read the Financial Statement Kit (Form 13) and then very carefully complete each section. This is a very important document and there are penalties for making false statements. You must make a full and frank disclosure of your financial position. See the brochure 'Duty of Disclosure' for more information.

Completing the Affidavit

The affidavit should set out the most important facts in support of the final property or partner maintenance orders sought by you. This includes addressing:

1. The relevant facts to enable the court to assess the contributions made by each party and decide what percentage of the property each party should receive based on the contributions of each party;
2. The relevant facts to enable the court to make any further adjustment to ensure the settlement will be fair and to make a clean break in the parties' financial relationship, where practicable;
3. A summary of the issues in dispute between the parties; and
4. The relevant facts in support of any interim orders sought by you, if applicable.

For more information about relevant factors in property and other financial cases in the Family Court, see the brochure series 'Financial Cases in the Family Court' and attached information sheet 'Matters the Court will take into account' [*Family Law Act* 1975 Section 79(4) & 75(2)].

Requirements for de facto relationships

De facto partners can only make application for property orders or for partner maintenance if they separated on or after **1 December 2002**. There are also other requirements that must be satisfied before the Court can make orders. To satisfy these requirements you must also deal with the following matters in the affidavit.

1. The affidavit must establish that at least one of the parties is residing in Western Australia on the day the application for orders is made.
2. The affidavit must also establish at least one of the following 3 things:
 - that you lived in a de facto relationship with the other party for at least two years, **or**
 - that you lived in a de facto relationship for less than 2 years but that there is a child of the relationship under the age of 18 years and failure to make the order sought would result in serious injustice to the party caring or responsible for the child; **or**

- that you have lived in a de facto relationship for less than 2 years but that the partner applying for the order has made substantial financial, non-financial or homemaker/parent contributions and failure to make the order would result in serious injustice.
3. The affidavit must also establish at least one of the following 2 things:-
- that both you and the other party resided in Western Australia for at least one third of the period of your de facto relationship; **or**
 - that substantial financial, non-financial or homemaker/parent contributions have been made by you or the other party while resident in Western Australia.
4. The affidavit must also advise whether you or the other party has a spouse. If either party has a spouse the affidavit should indicate that a sealed copy of the Form 1 will be served on that spouse.

Section 205ZB(1) of the *Family Court Act* 1997 requires an application seeking a property settlement (pursuant to Part 5A of that Act) be made within two years after the relationship ended.

How do I sign the Financial Statement and Affidavit?

First, find a Justice of the Peace (JP), a lawyer or a Notary Public. A Notary Public is an officer appointed by the Supreme Court and will charge for their service.

Form 13 Financial Statement - You and the JP must sign next to the signing clauses on page 1. Alterations must be initialled by you and the JP.

Affidavit – You and the JP must sign next to the signing clauses on the final page of the affidavit and also you both must sign the bottom of each page. See the Affidavit Instructions for more information, eg: signing of annexures to affidavits.

Where do I find a Justice of the Peace?

There is usually a Justice of the Peace (JP) at the Family Court between 9.30 am and 1.00 pm. If a JP is not available you may find one at the Justices' Association at 25 Barrack Street, Perth. For a JP near your home, telephone the Justices' Association on 1300 657 788 or visit their web page at www.dotag.wa.gov.au – Justices of the Peace.

Are there any fees?

There is a filing fee for a Form 1 – see the Court Fees brochure. Payment can be made in cash, cheque or postal/money order made payable to “The Family Court of WA”. EFTPOS facilities and payment by Mastercard or Visacard are also available at the Registry.

If posting in your documents, a credit card authority form is available from the ‘Fees’ section of the Family Court of WA website at www.familycourt.wa.gov.au.

Can I have the fee reduced?

You may be eligible to have the fee reduced. If you have a government concession card, you need to complete the form “Application – Reduction of payment of court fees – general”.

If you do not have a government concession card, and wish to try and have the fee reduced because of financial hardship, complete the form “Application for reduction of court fees on the basis of financial hardship”. Both forms are available from the registry and the Family Court of WA website at www.familycourt.wa.gov.au.

What happens after I have completed the forms?

Make two photocopies of the forms you have just completed and two copies of the affidavit. There is a coin operated photocopier on the ground floor of the Family Court of WA, opposite the registry counter.

Post or bring the forms, affidavit and copies into the registry. By posting the documents (Family Court of WA, GPO Box 9991, PERTH WA 6848) you may avoid a queue. The officer who serves you will take the papers for assessment. Once they are filed the copies will be returned by post within a few days. These will show the date that your application has been listed for a procedural hearing. One copy is for you and one is for the other party.

Do I have to notify the other party?

The Court will not usually hear a case unless the other party has received the Court papers. Registry staff will give you a 'Service Kit' that explains how to arrange this.

When will my first hearing be?

Court staff will allocate a date for a Procedural Hearing at the time your application is filed. This will usually be about 6 weeks later. If you can come to an agreement the Judicial Officer will be able to finalise the proceedings.

If you are seeking interim orders your case will then be listed before a Magistrate in the General List approximately 6 weeks later.

If your case deals with financial and children's matters, your case will be listed for a hearing. The Judicial Officer will consider both your financial and children's issues and will enquire if you rely on any cross-vested jurisdiction or if your matter involves financial issues in relation to superannuation, binding financial agreements or bankruptcy/insolvency. These are complicated legal matters and if you think your case involves these matters you should seek legal advice.

You can come to an agreement at any time – you do not have to wait until the hearing. If you reach an agreement you should file a 'Minute of Consent Orders' signed by all parties and ask a Court Registrar to deal with the case in his or her office. Court staff can tell you how to do this.

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 8am to 8pm Monday to Friday, and 10am to 4pm on Saturdays.

For more information about the Family Court of Western Australia, 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 Western Australia registry.

Who else can help?

- **Legal Aid WA**
www.legalaid.wa.gov.au
1300 650 579
- **Community Legal Centres Association of Western Australia**
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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Sample property order

(These orders are given as a general example, you should seek legal advice before seeking orders.)

Sale of land and division of proceeds

1. The applicant and respondent shall cause the property situate at *(address)*, and being more particularly described as *(land description as shown on the Certificate of Title)* to be placed on the market for sale at a price and on conditions to be agreed between them.
2. The proceeds of sale of the property be disbursed as follows:
 - a. in adjustment of rates and taxes
 - b. in payment of the expenses of sale including real estate agent's commission;
 - c. in payment of any monies required to secure discharge of any encumbrance registered against the title to the said property; and
 - d. the balance be divided in proportions ___% to the applicant and ___ % to the respondent.
3. The applicant and respondent have liberty to apply to the Court in relation to the terms and conditions of sale.

Transfer of interest in land

4. The applicant/respondent transfer his/her right, title and interest in the property situate at *(address)* and being more particularly described as *(land description on the Certificate of Title)* to the respondent/applicant absolutely.

Transfer of interest in land upon payment

5. The applicant/respondent shall pay to the respondent/applicant the sum of \$X within 30 days.
6. Upon payment of the said sum the respondent/applicant transfer to the applicant/respondent the whole of his/her right, title and interest in the property situate at *(address)* and being more particularly described as *(land description on the Certificate of Title)*.
7. The applicant/respondent indemnify the respondent/applicant and keep the respondent/applicant indemnified in relation to all liabilities and outgoings with respect to the property including all obligation pursuant to the mortgage registered against the title to the property.

Assets other than land

8. The applicant and respondent each retain the motor vehicles and furniture and household contents presently in their possession or control.

Matters the Court will take into account

Family Law Act 1975 Section 75(2) & 79(4) / Family Court Act 1997 Section 205ZD(3) & 205ZG(4)

75 Matters to be taken into consideration in relation to spousal maintenance

(2) The matters to be so taken into account are:

- (a) the age and state of health of each of the parties; and
- (b) the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment; and
- (c) whether either party has the care or control of a child of the marriage who has not attained the age of 18 years; and
- (d) commitments of each of the parties that are necessary to enable the party to support:
 - (i) himself or herself; and
 - (ii) a child or another person that the party has a duty to maintain; and
- (e) the responsibilities of either party to support any other person; and
- (f) subject to subsection (3), the eligibility of either party for a pension, allowance or benefit under:
 - (i) any law of the Commonwealth, of a State or Territory or of another country; or
 - (ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Australia;and the rate of any such pension, allowance or benefit being paid to either party; and
- (g) where the parties have separated or divorced, a standard of living that in all the circumstances is reasonable; and
- (h) the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income; and
- (ha) the effect of any proposed order on the ability of a creditor of a party to recover the creditor's debt, so far as that effect is relevant; and
- (j) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party; and
- (k) the duration of the marriage and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration; and
- (l) the need to protect a party who wishes to continue that party's role as a parent; and
- (m) if either party is cohabiting with another person—the financial circumstances relating to the cohabitation; and
- (n) the terms of any order made or proposed to be made under section 79 in relation to:
 - (i) the property of the parties; or
 - (ii) vested bankruptcy property in relation to a bankrupt party; and

- (naa) the terms of any order or declaration made, or proposed to be made, under Part VIIIAB in relation to:
 - (i) a party to the marriage; or
 - (ii) a person who is a party to a de facto relationship with a party to the marriage; or
 - (iii) the property of a person covered by subparagraph (i) and of a person covered by subparagraph (ii), or of either of them; or
 - (iv) vested bankruptcy property in relation to a person covered by subparagraph (i) or (ii); and
- (na) any child support under the *Child Support (Assessment) Act 1989* that a party to the marriage has provided, is to provide, or might be liable to provide in the future, for a child of the marriage; and
- (o) any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account; and
- (p) the terms of any financial agreement that is binding on the parties to the marriage; and
- (q) the terms of any Part VIIIAB financial agreement that is binding on a party to the marriage.

79 Alteration of property interests

- (4) In considering what order (if any) should be made under this section in property settlement proceedings, the court shall take into account:
- (a) the financial contribution made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of that last-mentioned property, whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the marriage or either of them; and
 - (b) the contribution (other than a financial contribution) made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of that last-mentioned property, whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the marriage or either of them; and
 - (c) the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of homemaker or parent; and
 - (d) the effect of any proposed order upon the earning capacity of either party to the marriage; and
 - (e) the matters referred to in subsection 75(2) so far as they are relevant; and
 - (f) any other order made under this Act affecting a party to the marriage or a child of the marriage; and
 - (g) any child support under the *Child Support (Assessment) Act 1989* that a party to the marriage has provided, is to provide, or might be liable to provide in the future, for a child of the marriage.