



Before you File:

Pre-action procedures for financial cases
FAMILY COURT OF WESTERN AUSTRALIA

This brochure will tell you

What you will need to do before you take a dispute about property or financial issues to the Family Court of Western Australia.

Different pre-action procedures apply for applications which include issues relating to parenting and children. For more information about pre-action procedures in parenting cases, read brochure 2 “Before you File: Pre-Action Procedure for Parenting Cases”.

If you need more information about pre-action procedures, contact the Family Relationship Advice Line on 1800 050 321.

What is required?

Anyone involved in a property settlement or maintenance dispute must comply with the pre-action procedures before they can apply to the Family Court of WA for property orders.

The pre-action procedure steps include:

1. Participating in some sort of dispute resolution.
2. If dispute resolution is unsuccessful, writing a letter to the other parties, setting out your claim and exploring options for settlement.
3. Complying with the duty of disclosure.

In some circumstances the Court will accept that it is not possible to comply with the pre-action procedures. In situations where:

- the matter is very urgent;
- there is a risk of family violence;
- there is a risk of fraud;
- one person has refused to negotiate;
- one person could be unfairly disadvantaged if the other party knew they wanted to start a case;
- where a time limit is close to expiring; or
- there has been a previous application about the same issue in the last 12 months.

You should contact the Registry and ask for a “Property Orders Kit”, then seek legal advice.

Pre-action procedure step by step

If a matter goes to Court, it is important that both parties are aware of what their current financial situation is and what the other side wants.

The pre-action procedures allow for each side to give written notice of their current financial situation and what it is they are looking for from the other side.

This reduces the amount of time spent in Court, and the cost for both parties.

If your case involves parenting and financial issues

If your case involves financial and parenting issues you will need to follow the pre-action procedures in this brochure and those in brochure 2 “Before you file, Pre-Action Procedure in Parenting Cases”.

Step 1: Dispute resolution

Dispute resolution is an opportunity to resolve your dispute without having to pay for an expensive trial.

Dispute Resolution can come in many forms including services like:

- family counselling;
- negotiation;
- conciliation; or
- arbitration.

You can choose the type of dispute resolution that best suits your situation. You can obtain more information, and get help arranging your dispute resolution from the Family Relationship Advice Line on 1800 050 321.

What happens after dispute resolution?

What happens after dispute resolution depends on whether you have managed to come to an agreement with the other party.

If an agreement is reached during dispute resolution, you and other party can apply to the Court for a consent order.

- A consent order is a written agreement between the parties.
- For the consent order to become legally binding it needs to be approved by the court.
- Once approved by the Court cannot be changed unless the parties make an application to the Court.

To get a Consent Order Kit go to www.familycourt.wa.gov.au, call 08 9224 8222 or 1800 199 228, or visit the Family Court of WA registry.

If no agreement is reached, you will need to comply with the rest of the pre-action procedures before you can file an application with the Court (see step 2).

Step 2: Write a letter setting out your position

You should deliver to the other party a letter setting out:

- the issues in dispute;
- the orders that you will be seeking if a case is started;
- a genuine offer to resolve the issues in dispute; and
- a time (that is at least 14 days after the date of the letter) within which they are required to reply to the notice.

The other party should reply with their own letter setting out:

- the issues in dispute;
- the orders that they will be seeking if a case is started;
- a genuine counter-offer to resolve the issues in dispute; and
- the time (that is at least 14 days after the date of the letter) within which the you must reply.

It is expected that a party will not start a case by filing an application in a court unless:

- the proposed respondent does not respond to a notice of intention to start a case; or
- agreement is unable to be reached after a reasonable attempt to settle by correspondence under this clause.

Step 3: Exchange documents setting out your financial position

The Court requires that you exchange the following documents with the other party at the earliest possible opportunity. You have until two days before the first court event (Case Assessment Conference or Procedural Hearing) to exchange these documents:

- the party's three most recent taxation returns and assessments;
- any superannuation documents for each superannuation interest of the party, including:
 - the completed Superannuation Information Form;
 - for a self-managed superannuation fund, the trust deed and the last three financial statements;
- for a corporation (business), trust or partnership where the party has a duty of disclosure:
 - financial statements for each (including balance sheets, profit and loss accounts, depreciation schedules and taxation returns) for the three last financial years;
- for the party or a corporation (business), trust or partnership where the party has a duty of disclosure:
 - any Business Activity Statements for the 12 months ending immediately before the first court date;
- for any corporation, its most recent annual return, listing directors and shareholders; and the corporation's memorandum and articles of association;
- for any trust, the trust deed;
- for any partnership, the partnership agreement; and
- a market appraisal of any item of property in which a party has an interest.

You should read the Court's brochure, "Duty of Disclosure" for more information.

What happens next?

If no agreement is reached, then either party may make an application to the Court for a property order.

For more information on lodging an application for a property order or to get a Property Orders Kit: call 08 9224 8222 or 1800 199 228, or visit the Family Court of WA registry or website.

Compliance

If a case goes to court the Court will look at whether the pre-action requirements have been met, and if not, what should be the consequences (if any) of either party failing to comply.

The Court may, where one party has been unreasonable and failed to follow the pre-action procedures:

- order that the party which has failed to comply pay all or part of the other party's costs; or
- change the way your case progresses through the Court.

The Court may also ensure that the complying party is in no worse a position than he or she would have been if the pre-action procedure had been complied with.

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 8:00am to 8:00pm Monday to Friday, and 10:00am to 4:00pm on Saturdays.

For more information about the Family Court of WA, 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 WA registry.

Who else can help?

- **Legal Aid WA**
www.legalaid.wa.gov.au
1300 650 579
- **Community Legal Centres Association of WA**
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.

V3 – 290708