



Duty of disclosure in family law

Author: [Mairead Melia](#)

Email: mairead@emerafamilylaw.com.au

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As separating couples navigate the family law system, they might hear the term “disclosure” referred to frequently by their lawyer or the Court. In this blog, we look at your duty of disclosure in family law:

- what disclosure means;
- what is involved; and
- how you can discharge your disclosure obligations.

If you have separated from your partner, you may be wondering what information you can find out about their financial position, or what you have to disclose about your own. If there are children involved, you may also be questioning what information you must share with your partner, or whether they have a legal obligation to share specific information with you.

Disclosure in parenting matters

Although disclosure is most commonly referred to in a financial sense, under the *Family Law Rules*, a party to family law proceedings must “give full and frank disclosure of all information relevant to the case, in a timely manner.” This general duty to disclose applies not just to financial cases, but to [parenting cases](#) as well.

Information relevant to your parenting case that must be disclosed may include things like:

- copies of medical reports relating to children;
- diagnoses of mental health conditions of a parent;

- details of involvement with child protection authorities;
- details of criminal matters relating to a parent; and/or
- copies of the children's school reports.

If you are unsure about whether the information you hold is relevant to your parenting case and must therefore be disclosed, it is important that you [seek advice from a lawyer experienced in family law](#).

Disclosure in financial matters

Each party to a family law financial matter ([property settlement](#)) has a duty to provide full and frank disclosure about their assets, liabilities and financial resources.

Under the *Family Law Rules*, if you are a party to a financial case, you must make full and frank disclosure of your financial circumstances, including:

- your earnings/income, including wages, investment income such as dividends or rent, and income from a business or trust;
- any interest in property owned by you personally, including property you may own jointly with someone else;
- any interest in property owned by a business, company or trust that you have ownership or control of;
- any interest in property that someone may hold on your behalf; and/or
- any entitlement to a pending inheritance or compensation payment.

As a party to a financial case, you are also obliged to disclose any disposal of property by you (whether sold, transferred or gifted), since separation or in the 12 months immediately before separation.

In order to discharge your disclosure obligations, it is common for the following types of documents to be exchanged by the parties:

- Tax returns and Notices of Assessment;
- Payslips;
- Bank statements;
- Superannuation statements;
- Share statements;
- Financial reports of any business or trust (such as balance sheets, profit and loss statements, depreciation schedules, tax returns and BAS).

When does my duty of disclosure end?

Your duty to disclose relevant information exists at all stages of your family law matter and continues up until your matter is resolved by way of a consent settlement or a Judge hearing your case at a Final Hearing.

This means that you may be requested to provide updated disclosure (for example, more documents, new information etc) at various points before your matter is settled or determined by a Judge on a final basis.

What are the benefits of making full and frank disclosure?

Apart from the fact that there is a legal obligation to make disclosure in family law matters, there are benefits to making full and frank disclosure in a timely manner.

Early disclosure can help narrow the issues and can lead to quicker settlements. It can help to progress the matter swiftly and may assist you to avoid court proceedings (saving you time and money).

Being upfront and cooperative early on can also demonstrate an act of good faith and improve your partner's approach to negotiations, promoting settlement. Having an early settlement will generally mean you pay less in legal costs, and you also get to move on with your life quicker and avoid the stress and uncertainty of negotiations or court proceedings.

You can read more about amicable and negotiated family law settlement in our blogs:

- [Top 5 tips for amicable property settlement](#)
- [The advantages of an amicable separation from your partner](#)

What happens if I do not disclose?

Refusals to make full and frank disclosure are generally frowned upon by Courts. Hidden or undisclosed assets can usually be traced by family lawyers and there may be very serious consequences for failing to disclose assets, including punishment for contempt of court.

If you are unwilling to make full and frank disclosure, the following may occur:

- A Court may order that you do so. If the other party has had to apply to the Court for this Order, you may be at risk of an Order for costs being made against you.
- The other party may issue a subpoena for the release of documents without your cooperation.
- A Court may decline to list your matter for a Conciliation Conference, thereby stalling progression/resolution of your matter.
- A Judge may draw an adverse inference against you based on your failure to disclose.

A further risk of non-disclosure applies if your matter has already been resolved. If it is found that there has been a miscarriage of justice due to the failure of a party to disclose relevant information, a Court may vary or set aside Orders, and make new Orders altering your property interests on a final basis.

Get help

If you are still unsure about your disclosure obligations or need help with getting your former partner to make full and frank disclosure, you should seek assistance from a family lawyer. At Emera Family Law, we can [provide you with an initial free consultation](#) so it costs you nothing to find out where you stand.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.