

# Disclosure: Your Obligations

Article by Townsville Family Lawyer, Jodi Dingwall

9 June 2021

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## Your Duty to Disclose

All parties to a family law dispute have a duty to provide to each other all information relevant to an issue in the case. This is your duty of disclosure.

Your duty to provide disclosure is ongoing – from before your case starts and continues until your case is finalised.

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## Disclosure in parenting cases

All parties are required to make full and frank disclosure of all information relevant to a parenting case, at all stages in their case.

In parenting cases, this will be case specific.

Examples of the kinds of documents that may need to be disclosed in a parenting case include:

- Medical reports about a child or parent to the proceedings;
  - Expert reports;
  - School reports;
  - Letters and drawings by a child;
  - Photographs;
  - Diaries.
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## Disclosure in financial cases

There are very specific rules when it comes to financial cases.

The rules require each party to a financial case to make full and frank disclosure of their financial circumstances. That includes providing disclosure in relation to:

- (a) earnings (including income that is paid or assigned to another party, person or legal entity);
- (b) any vested or contingent interest held in property;
- (c) any vested or contingent interest in property owned by a legal entity that is fully or partially owned or controlled by a party;
- (d) any income earned by a legal entity fully or partially owned or controlled by a party, including income that is paid or assigned to any other party, person or legal entity;
- (e) the party's other financial resources;
- (f) any trust:
  - (i) of which the party is the appointor or trustee;
  - (ii) of which the party, the party's child, spouse or de facto spouse is an eligible beneficiary as to capital or income;

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- (iii) of which a corporation is an eligible beneficiary as to capital or income if the party, or the party's child, spouse or de facto spouse is a shareholder or director of the corporation;
- (iv) over which the party has any direct or indirect power or control;
- (v) of which the party has the direct or indirect power to remove or appoint a trustee;
- (vi) of which the party has the power (whether subject to the concurrence of another person or not) to amend the terms;
- (vii) of which the party has the power to disapprove a proposed amendment of the terms or the appointment or removal of a trustee; or
- (viii) over which a corporation has a power mentioned in any of subparagraphs (iv) to (vii), if the party, the party's child, spouse or de facto spouse is a director or shareholder of the corporation;
- (g) any disposal of property (whether by sale, transfer, assignment or gift) made by the party, a legal entity mentioned in paragraph (c), a corporation or a trust mentioned in paragraph (f) that may affect, defeat or deplete a claim:
  - (i) in the 12 months immediately before the separation of the parties; or
  - (ii) since the final separation of the parties; and
- (h) liabilities and contingent liabilities.

**The documents that may need to be produced may vary from case to case. But examples of the types of documents that are usually required to be disclosed include:**

1. Tax Returns and Notice of Assessments for the past three financial years;
  2. A copy of your most recent superannuation statement;
  3. A copy of bank account statements that have an interest in for the past 12 months;
  4. Copies of credit cards statements you have an interest in for the past 12 months;
  5. Copies of all mortgage account / loan account statements that you have an interest in for the past 12 months;
  6. If you own or control a business, business activity statements for the past 12 months;
  7. If you have an interest in corporation, trust or partnership, financial statements for the past three years;
  8. If you have an interest in a trust, the Trust Deed;
  9. Your 3 most recent payslips;
  10. Details of shares or investments you hold;
  11. Motor vehicle registration statements;
  12. Valuations / appraisals (if they have previously been obtained) in relation to real property or chattels.
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## Consequences of not providing disclosure:

All parties to a family law dispute have a duty to provide to each other all information relevant to an issue in the case. This is your duty of disclosure.

Your duty to provide disclosure is ongoing – from before your case starts and continues until your case is finalised.

If you fail to make full and frank disclosure penalties may apply. They can include:

- The court making findings and adverse inferences against the party who has failed to make disclosure.
- The court making a costs order against you.
- The court dismissing all or part of your application.
- The court preventing you from relying on a specific document in your case.

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## Where to from here?

The obligation produce financial documents can be onerous. Everyone's situation is different.

We can explain and assist you in determining what documents you need to disclose and what documents do not need to be disclosed.

It is always sensible to consult with a family lawyer to discuss your situation and obtain advice.

O'Shea Dyer Townsville has experienced family lawyers who practice exclusively in Family Law.

We offer first appointments at a low fixed fee so everyone can afford to obtain advice about their situation.

Please call us to make an appointment. 47 725 155.

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