



Financial Cases

Information about property and financial cases in the Family Court
FAMILY COURT OF WESTERN AUSTRALIA

This brochure will tell you

The purpose of this brochure is to provide you with an overview of property and maintenance cases in the Family Court of Western Australia.

This brochure only deals with financial cases that do not involve any children's issues. If you are looking for information about parenting cases in the Family Court, read the brochure series "Parenting Cases", available from the Family Court of WA website, or the registry.

What is a financial case?

Financial cases, also called property cases, are matters where people seek the help of the court to resolve a dispute about how property is to be split after separation.

Property can take many forms. It includes real estate, motor vehicles, furniture, investments and in some cases, superannuation.

In determining a property settlement application the Court will follow a four step process:

1. Identify and value the assets and liabilities of the parties.
2. Assess the contributions made by each party and decide what percentage of the property each party should receive based on the contributions of both of the parties.
3. Make any further adjustment to ensure the settlement will be fair and to make a clean break in the parties' financial relationship (when practicable).
4. Determine whether the resulting division is just and equitable.

At the end of a case, the Court may make a legally binding order which can do any of the following:

- order payment of a lump sum, whether in one amount or by instalments;
- order payment of a weekly, monthly, yearly or other periodic sum;
- order that a specified transfer or settlement of property be made;
- appoint or remove trustees;
- order that payments be made direct to a party, to a trustee to be appointed or into court or to a public authority for the benefit of a party;
- impose terms and conditions; or
- make an order by consent.

Do I need to go to Court?

You do not need to go to Court, in fact it is usually better to resolve problems away from the Court.

The Court expects prospective parties to try to resolve their dispute before they make an application to the court. Anyone who does not comply with these requirements (unless exempt) risks serious consequences, including costs penalties.

You must follow the Family Court's pre-action procedures. Read brochure 2 "Before you File".

Pre-action procedure steps include:

- participating in dispute resolution services such as mediation, counselling, negotiation, conciliation or arbitration;
- complying, as far as practicable, with the duty of disclosure.

The steps towards resolving your dispute

1. Pre-action procedures:

- Before you can begin a financial case you will need to attempt to negotiate a solution with the other party.
- You will need to follow the Court's pre-action procedures. For more information, read Brochure 2 "Before you File".

2. Filing an application, applying to the Court for a property order:

- If you cannot reach an agreement through dispute resolution, or you are unable to participate in dispute resolution, you may make an application to the court.
- To do this you will need to lodge an application at the Family Court of WA Registry.
- For information about filing an application for orders read the "Property Orders Kit".

3. The Procedural Hearing:

- When you or the other party file an application in the Family Court of WA, you are generally allocated a Procedural Hearing.
- If your case also involves children's matters, the procedural hearing will occur after your Case Assessment Conference.
- If you have applied for interim orders, these will be considered at your first court appearance.
- For information about your first Court appearance read brochure 3 "The Procedural Hearing".

4. The Conciliation Conference:

- Your next court appearance will probably be a Conciliation Conference.
- The Conference does not take place in a Courtroom, you will work directly with a Registrar to try and negotiate a solution to your dispute.
- At the Conference the Registrar may make procedural orders, setting out what you and the other party will need to do to prepare for the next stage of your case.
- For more information about the Conciliation Conference process you can read brochure 4 "The Conciliation Conference".

5. The Readiness Hearing

- If your case is not resolved at your Conciliation Conference, your matter will be listed for a Readiness Hearing.
- The purpose of this hearing is to decide if your matter is ready for trial.
- Even if your matter is ready to go to trial, there may still be a delay before a trial date can be allocated.
- For more information about the Readiness Hearing read brochure 5 "The Readiness Hearing".

6. The Trial:

- This will be when the Court decides on a final order.
- You will be given the opportunity to state your case and submit evidence to the Court.
- At the conclusion of the trial, the Court will make a final order for your case.
- For more information about the trial process read the booklet:
"A guide to representing yourself in the Family Court of WA - Property Cases".

7. Your court order:

- A court order is legally binding from the moment it is made. If someone breaches a court order, you can apply to the Court to have it enforced.

All brochures and booklets can be obtained from the Family Court of WA registry or website: www.familycourt.wa.gov.au.

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.

Lawyers' obligations

Your lawyer must, as early as possible:

- advise you (the client) of ways of resolving the dispute without starting legal action;
- advise the client of your duty to make full and frank disclosure, and of the possible consequences of breaching that duty;
- subject to it being in the best interests of the client and any child, endeavour to reach an agreement rather than start or continue legal action;
- notify the client if, in the lawyer's opinion, it is in the client's best interests to accept a compromise or settlement where, in the lawyer's opinion, the compromise or settlement is a reasonable one;
- in cases of unexpected delay, explain the delay to the client and whether or not the client may assist to resolve the delay;
- advise the client of the estimated costs of legal action;
- advise the client about the factors which may affect the Court in considering costs orders;
- actively discourage the client from making ambit claims or seeking orders which the evidence and established principles, including recent case law indicates, is not reasonably achievable, and;
- provide the client with documents prepared by the Court about:
 - the social and legal effects of separation;
 - the services provided to families by the Family Court and by government, community and other agencies; and
 - the obligations created by an order and the consequences for failing to comply with an order.

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 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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