

Success Starts Here Free Information Guide

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Family Law



A crucial part of dealing with financial matters on divorce is having a full picture of each party's financial positions. This free information guide gives practical advice on the financial information that must be given, which is called **General Duty of Disclosure**.

General Duty of Disclosure

Whether you have reached an agreement in respect of financial matters with your spouse or not, there will always have to be an exchange of financial information so that each party is aware of the other's financial position.

A Court will not make a consent order, which will make any agreement legally binding, without basic financial disclosure being given. A solicitor will only be able to advise you on the terms of any settlement if they have a clear idea of what is available to distribute.

If you wish to use a solicitor to negotiate a financial settlement, wish to make an application to court or want to try and resolve matters in mediation or in the collaborative process; financial disclosure is at the heart of each process. In all cases there is a framework to ensure that disclosure is given in an orderly and usually standardised way.

Both parties are expected to give "full and frank" financial disclosure which relates to both facts and documents. The duty is ongoing and there is an obligation to disclose material developments on an ongoing basis without being asked to do so.

There is an expectation that disclosure will be given voluntarily but if an application is made to the court, the timing and extent of disclosure is strictly regulated.

The attitude of the court is very much that litigation should be conducted with all the cards face up on the table and it is only in very limited circumstances that disclosure can be objected to.

Implications of non disclosure

The courts take a dim view of people who fail in their duty to provide full and frank disclosure. The failure to disclose can result in any of the following:

- The court deciding that it amounts to litigation misconduct and ordering the offending party to pay the other side's legal costs
- The court making assumptions about the offending parties' resources or financial position so that the other party receives a greater settlement or award

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- The court regarding the non disclosure as conduct and awarding the non-offending party with a better settlement than they would have otherwise got
- The non-disclosing party losing credibility so that the Judge does not believe what they say on other issues;
- Any final order being set aside in future and the innocent party receiving more by way of a settlement, if the non-disclosure becomes apparent at some point in future.

Can you take documents belonging to your spouse?

It is up to each party to provide financial disclosure of their finances. You are not expected or indeed should provide documents belonging to your spouse.

Married couples are not exempt from the rule that each person has the right to privacy. You are not entitled to access, copy or retain confidential information belonging to another, even if you suspect that they will not abide by their duty of disclosure. What is confidential is not easy to define but it includes all documents connected with family /private life, personal and family assets or business dealing. The location of the documents is relevant and the key question is whether the person would consent to that document being accessed.

If a person accesses confidential information they could face an application for an injunction, damages, an order to pay legal costs and criminal prosecution. The court may also decide that the documents cannot be admitted or referred to in any court proceedings.

You should ensure that all your confidential information is stored in a safe and secure place and that all electronic information is protected by secure passwords.

What if your spouse is being secretive and will not disclose?

If a person is not willing to comply with the duty of disclosure it is usually advisable to make an application to court for a financial order so that the court can manage the disclosure process. It is also possible to make other applications in the court process such as:

- An order requiring 3rd parties (for example banks, accountants, business partners) to disclose information
- An order for disclosure with a penal notice attached. If a penal notice is breached the offending party could be held in contempt of court and sent to prison
- An order to search for and seize documents or computer equipment
- An order freezing assets such as bank accounts, pending the resolution of a settlement

What should I do now?

Matters concerning financial disclosure can become complex, particularly if you are faced with a spouse being secretive. If you require legal advice, please contact our Family Law Department.