



Property Orders Kit - Respondent

FAMILY COURT OF WESTERN AUSTRALIA

Is this kit for me?

Yes - if you are responding to a Form 1 Application for Final Orders.

What is property?

Property can take many forms. For example it includes real estate, motor vehicles, furniture and investments. In some cases superannuation is treated as property. For more information about property and other financial cases in the Family Court, see the brochure series 'Financial Cases in the Family Court'.

Do I need to go to court?

Not if you agree with the orders being sought.

The Form 1 application that you have received will show the date for the Procedural Hearing. If you agree with the property orders sought, either attend the hearing or write a letter to the Court saying you agree and provide a copy of the letter to the other party.

If you do not agree with the orders being sought, you must respond quickly.

The Court encourages people to find solutions outside of Court. If at any point you and the other party reach an agreement, you can apply to the Court to have it registered as a Consent Order. See the "Consent Order Kit" for more information.

What forms do I need?

There are two forms in this kit:

- Form 1A Response to an Application for Final Orders; and
- a Financial Statement (Form 13).

If you or the other party have an interest in a superannuation fund you will also need either the last two member statements from the fund or a Superannuation Information Kit. This is available from the Court or at www.familycourt.wa.gov.au (*The Superannuation Information Kit should be used only if you were married to the other party – it does not apply to de facto couples.*)

Completing the Form 1A

Work your way through each part of the Form. It does not have to be typed but please print very neatly.

Ask Court staff if you do not understand what a question means, but remember they cannot tell you how to answer a question or give you legal advice.

What orders should I ask for?

Write the orders you want in Part C of the Form 1A. You may need to attach an extra page to the Form. Some examples are attached to the end of this kit.

Sometimes people applying to the Court ask for orders to preserve the position until the final decision is made. These are called "interim orders". If you wish to seek interim orders, complete an Application in a Case (Form 2). If you have not asked for interim orders, no orders will be made at the first hearing unless the other party agrees.

If you decide to apply for interim orders you must also file an affidavit. This Form is available from the Court or at www.familycourt.wa.gov.au.

If you have received an Application in a Case (Form 2) and you do not agree with the orders being sought, then you need to file a Response to an Application in a Case (Form 2A) and an affidavit.

Requirements for de facto relationships

De facto partners can only make application for property orders or for partner maintenance if they separated on or after **1 December 2002**. There are also other requirements that must be satisfied before the Court can make orders. The requirements are:

1. An affidavit must establish that at least one of the parties is residing in Western Australia on the day the application for orders is made.
2. An affidavit must also establish at least one of the following 3 things:
 - that you lived in a de facto relationship with the other party for at least two years, **or**
 - that you lived in a de facto relationship for less than 2 years but that there is a child of the relationship under the age of 18 years and failure to make the order sought would result in serious injustice to the party caring or responsible for the child; **or**
 - that you have lived in a de facto relationship for less than 2 years but that the partner applying for the order has made substantial financial, non-financial or homemaker/parent contributions and failure to make the order would result in serious injustice.
3. An affidavit must also establish at least one of the following 2 things:-
 - that both you and the other party resided in Western Australia for at least one third of the period of your de facto relationship; **or**
 - that substantial financial, non-financial or homemaker/parent contributions have been made by you or the other party while resident in Western Australia.
4. An affidavit must also advise whether you or the other party has a spouse. If either party has a spouse the affidavit should indicate that a sealed copy of the Form 1A will be served on that spouse.

Section 205ZB(1) of the *Family Court Act 1997* requires an application seeking a property settlement (pursuant to Part 5A of that Act) be made within two years after the relationship ended.

Completing the Financial Statement

Read the Financial Statement Kit and then very carefully complete each section. This is a very important document and there are penalties for making false statements. You must make a full and frank disclosure of your financial position. See the brochure 'Duty of Disclosure' for more information.

How do I sign the Response and Financial Statement?

First, find a Justice of the Peace (JP), a lawyer or a Notary Public. A Notary Public is an officer appointed by the Supreme Court and will charge for their service.

You and the JP must sign next to the signing clause on the forms. Alterations must be initialled by you and the JP.

Where do I find a Justice of the Peace?

There is usually a Justice of the Peace (JP) at the Family Court between 9.30 am and 1.00 pm. If a JP is not available you may find one at the Justices' Association at 25 Barrack Street, Perth. For a JP near your home, telephone the Justices' Association on 1300 657 788 or visit their web page at www.justice.wa.gov.au.

Are there any fees?

There is a filing fee for a Form 1A – see the Court Fees brochure. Payment can be made in cash, cheque or postal/money order made payable to "The Family Court of WA". EFTPOS facilities and payment by Mastercard or Visacard are also available at the Registry.

If posting in your documents, a credit card authority form is available from the 'Fees' section of the Family Court of WA website www.familycourt.wa.gov.au.

What if I can not afford the fee?

You may be eligible to have the fee waived. If you think you could be eligible, ask registry staff for the application form. Anyone with a Healthcare or means tested Centrelink card is eligible. If you do not have a Healthcare card, but think you might be eligible, there is a more detailed “Application for waiver of Court fees on the basis of financial hardship” form available from the Registry or the Court’s website.

What happens after I have completed the forms?

Make two photocopies of the forms you have just completed and two copies of any affidavit. There is a coin operated photocopier on the ground floor of the Family Court of WA, opposite the registry counter.

Post or bring the forms and copies into the registry. By posting the documents (Family Court of WA, GPO Box 9991, PERTH WA 6848) you may avoid a queue. The officer who serves you will file the forms and hand the copies back to you or they will be returned by post. One copy is for you and one is for the other party.

Do I have to notify the other party?

The Court will not usually hear a case unless the other party has received the Court papers. Registry staff will give you a ‘Service Kit’ that explains how to arrange this.

What will my first hearing be?

A date for a Procedural Hearing is usually about 4 to 6 weeks after the application was filed. If you can come to an agreement the Judicial Officer will be able to finalise the proceedings.

If an Application in a Case (Form 2) seeking interim orders was also filed then it will be heard before a Magistrate in the General List approximately 28 days later.

If your case deals with financial and children’s matters, your case will be listed for a Case Assessment Conference, where a Judicial Officer will consider both your financial and children’s issues.

You can come to an agreement at any time – you do not have to wait until the hearing. If you reach an agreement you should file a ‘Minute of Consent Orders’ signed by all parties and ask a Court Registrar to deal with the case in his or her office. Court staff can tell you how to do this.

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

For more information about the Family Court of Western Australia, 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 Western Australia 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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Sample property order

(These orders are given as a general example, you should seek legal advice before seeking orders.)

Sale of land and division of proceeds

1. The applicant and respondent shall cause the property situate at (*address*), and being more particularly described as (*land description as shown on the Certificate of Title*) to be placed on the market for sale at a price and on conditions to be agreed between them.
2. The proceeds of sale of the property be disbursed as follows:
 - a. in adjustment of rates and taxes
 - b. in payment of the expenses of sale including real estate agent's commission;
 - c. in payment of any monies required to secure discharge of any encumbrance registered against the title to the said property; and
 - d. the balance be divided in proportions ___% to the applicant and ___ % to the respondent.
3. The applicant and respondent have liberty to apply to the Court in relation to the terms and conditions of sale.

Transfer of interest in land

4. The applicant/respondent transfer his/her right, title and interest in the property situate at (*address*) and being more particularly described as (*land description on the Certificate of Title*) to the respondent/applicant absolutely.

Transfer of interest in land upon payment

5. The applicant/respondent shall pay to the respondent/applicant the sum of \$X within 30 days.
6. Upon payment of the said sum the respondent/applicant transfer to the applicant/respondent the whole of his/her right, title and interest in the property situate at (*address*) and being more particularly described as (*land description on the Certificate of Title*).
7. The applicant/respondent indemnify the respondent/applicant and keep the respondent/applicant indemnified in relation to all liabilities and outgoings with respect to the property including all obligation pursuant to the mortgage registered against the title to the property.

Assets other than land

8. The applicant and respondent each retain the motor vehicles and furniture and household contents presently in their possession or control.