



Enforcement Hearings

Family Court Rule 380(3)(b)

How to apply for an Enforcement Hearing
FAMILY COURT OF WESTERN AUSTRALIA

This brochure will tell you

- What an Enforcement Hearing is and who can apply.
- How to apply for an Enforcement Hearing.
- What will happen at the hearing?
- Any penalties which may apply.

What is an Enforcement Hearing and who can apply?

An Enforcement Hearing is an event where a person who is owed money (the payee) asks for the Court's help to obtain information about the financial situation of the person who owes them money (the payer) to help them recover money.

A payee who is owed money by a payer, arising out of a Family Court order, agreement or a child support liability, may apply for an enforcement hearing. The application will be directed to a payer or, if the payer is a corporation, an officer of the corporation (the respondent).

The Court will not investigate the order, agreement or child support liability being enforced. If a payer wishes to apply to vary or discharge an obligation a separate application will be necessary.

You should seek legal advice about this.

How do you apply for an Enforcement Hearing?

The *Family Court Rules* 2021, the forms and the brochures referred to in this brochure can be obtained from the Family Court of WA website www.familycourt.wa.gov.au.

Step 1: File an application with the court

The payee files:

- an Application in a Case (Form 2); and
- an Affidavit, complying with Rules 375 and 238 of the *Family Court Rules*.

When the application is filed the Court will fix an enforcement hearing date (see the top right hand of the filed Application in a Case (Form 2)).

Step 2: Serve the application on the respondent

At least 14 days before the date of the hearing the payee serves on the payer by special service the following, (www.familycourt.wa.gov.au/S/special_service_by_hand.aspx):

- the Application in a Case (Form 2);
- the Affidavit;
- a list of any documents that the payee wants the payer to produce;
- a written notice demanding the production of these documents; and
- a copy of this brochure – “Enforcement Hearings”.

Step 3: The payee responds

At least seven days before the hearing date the payer must:

- complete and swear a Financial Statement (Form 13); and
- serve this on the payee.

What will happen at the hearing?

At the Enforcement Hearing the payer:

- must produce the documents required by the payee in the list of documents; and
- may be examined about the payer's financial affairs.

The payer may be asked about:

- the reason for the failure to pay;
- the payer's income, property, debts and resources;
- any disposal of property by the payer; and
- the payer's debt.

Both parties may be represented by a lawyer at the hearing and may cross-examine any witnesses.

At the hearing the Court may make order(s) including:

- identifying the total amount owing under an obligation;
- that the total amount owing be paid in full or by instalments;
- for enforcement;
- in aid of the enforcement or to prevent the disposal of property or wasting of assets;
- for costs; and
- staying the enforcement of an obligation (including an enforcement order).

The order will be prepared by the Registry and a copy posted to you.

Failure to comply

Under the *Family Court Rules* (Rule 383) a penalty may be imposed on a person, upon whom an enforcement hearing is served, who fails to:

- serve a Financial Statement (Form 13);
- produce copies of documents to the payee; or
- attend the enforcement hearing as required by the application or as otherwise directed by the Court;

may be held in contempt of court, an offence for which the maximum penalty is \$5,500.

Any person who attends the enforcement hearing but fails to:

- answer a question put to the person; or
- give an answer to the court's satisfaction;

may be held in contempt of court, an offence for which the maximum penalty is \$5,500.

If a person who is served with an application fixing a date for an Enforcement Hearing fails to attend as required, the Court may issue a warrant for their arrest

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 Western Australia;
- 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 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 Western Australia, including access to the legislation, forms or publications listed in this brochure:

- go to www.familycourt.wa.gov.au; or
- call 1800 199 228.

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 respects your right to privacy and the security of your information.