A GUIDE TO

REPRESENTING YOURSELF IN THE FAMILY COURT OF WESTERN AUSTRALIA

PROPERTY CASES

Disclaimer

1. **The information contained in this guide is provided in good faith. However, the accuracy of the information cannot be guaranteed, as there may have been changes to the law since the guide was prepared.**
2. **The State of Western Australia, the Family Court of Western Australia and their employees and agents expressly disclaim any liability whatsoever to any person for any loss or damage arising, whether directly or indirectly, and whether or not as a consequence of negligence, from the contents or the use of this guide.**
3. **This guide has been prepared as a general guide. It is not a substitute for obtaining professional legal advice specific to your particular circumstances.**

Revised May 2024

Foreword

Many people are unable to afford a lawyer to help them to resolve family disputes. They can be at a disadvantage because the law is complicated and court processes are sometimes difficult to understand.

This guide is designed to help those people who do not have a lawyer to present their cases in the Family Court of Western Australia. It is not a substitute for competent legal advice, but it is hoped the information provided will make it easier for you to navigate through the court system.

Judges and magistrates must always remain impartial and not appear to help one side of a dispute to the disadvantage of the other. Although the judge or magistrate can provide some assistance, it is expected that each party who does not have a lawyer will have tried their best to become familiar with this guide before coming to court.

The court has received much positive feedback about earlier editions of the guide. We would appreciate hearing from you about any way you feel that future editions might be improved.

Thanks are due to many people who have contributed to the new edition of this guide, including the registrars of the court.

GAIL SUTHERLAND
CHIEF JUDGE
FAMILY COURT OF WESTERN AUSTRALIA

Important – Do I need a lawyer?

You may be at a disadvantage if you represent yourself, especially if the other party has a lawyer. The judicial officer must decide a case on the evidence presented by both sides. The judicial officer can question you, the other party and the witnesses about evidence, but is limited in the help that they can provide.

It is recommended that you are represented by a lawyer at trial. If that is not possible, you should at least try to obtain advice from a lawyer about your case at the earliest possible stage (see Where can I get Legal Advice).

Contents

1. Introduction

Who is this guide for?

This guide is not intended to be a substitute for professional legal advice.

This guide is intended for people representing themselves at trial in property cases. It will provide a brief overview of the court process and the relevant law. However, the focus will be on how to prepare your matter for trial, and the trial process itself.

There are separate guides for people representing themselves at trial in parenting cases – one for matters where the parents were or are married to each other and one where the parents were not ever married to each other. If your case involves both children's issues and property issues, the court process will be as set out in this guide for your property orders only, unless you choose to have your property case dealt with as a child-related proceeding and both parties agree.

There is also a separate guide to assist you with using and navigating the eCourts Portal of WA.

Other materials dealing with the earlier stages of proceedings are available from the court's website. For example, if you are about to commence proceedings or are responding to an application, there is information and forms available as to how to prepare or oppose an application to the court. There is also information on court procedures during the resolution stage of the application, such as the Conciliation Conference. (**Note**: Procedures in country areas may be different.)

If you have not yet filed an application or been served with an application, you should engage in Pre-action procedures and consider alternative dispute resolution. You can also contact one of the organisations listed on the court's Legal Advice page.

There is a **Guide to legal terms** at the end of this guide, which provides some useful definitions.

There are hyperlinks to the Family Court of Western Australia's website embedded in this guide. Click on the hyperlinks to see more detailed information about the topic on the website.

The relevant legislation

If the parties were or are married, the relevant legislation is the ***Family Law Act 1975*** **(Cth)**. If the parties were in a de facto relationship, the ***Family Court Act 1997*** **(WA)** applies. You can only bring an application for property orders in relation to a de facto relationship in certain circumstances (see **Appendix C** of this guide).

Important sections from these Acts are set out in the appendices to this guide. To access the full text of the Acts go to legislation.gov.au/ (*Family Law Act 1975* (Cth)) or legislation.wa.gov.au/ (*Family Court Act 1997* (WA)).

Various rules and regulations have been made under the two Acts, such as the Family Court Rules 2021.

The court also has Case Management Guidelines and often issues Information Notes and Practice Directions which give guidance about practice and procedure in the Family Court of Western Australia.

2. About the court

Your case will be heard in the Family Court of Western Australia by a judge, or in the specialist Magistrates Court by a family law magistrate. The two courts work closely together in the same building and cases move seamlessly between them.

How to contact the Family Court

For information about contacting the court see Communicating with the Court and Judicial Officers.

Correspondence should either be uploaded via the eCourts Portal of WA or in certain limited circumstances by email to Family.Court@justice.wa.gov.au. You should address any correspondence to:

The Principal Registrar
Family Court of Western Australia
150 Terrace Road
Perth WA 6000

Note: You must send each other party a copy of any correspondence you send to the court, including the Independent Children's Lawyer (if appointed). It should be obvious from your correspondence to the court that a copy of your letter or correspondence will be going to the other parties to the case.

Personal safety

If you are concerned about your physical safety or the safety of one of your witnesses, you should notify the Principal Registrar in writing using the Personal safety measures request on our website, preferably **at least 14 days prior** to your court attendance. It is not necessary for you to send a copy of this particular letter to the other party.

You may wish to consider attending court by electronic communication (see further information below). If you become concerned for your safety whilst in the court building, please inform court staff as soon as possible.

Interpreters

If you, or a witness, need an interpreter, please consider the information available on the court's website to make appropriate arrangements.

Attending by electronic communication

The Family Court has facilities available for people to attend court by electronic communication, such as telephone or video link.

If you need to use these facilities to attend a court event, you must ask permission by lodging a Request to Attend by Electronic Communication **at least seven days before** the court event.

However, if you need to use these facilities at a trial, you should tell the judicial officer at the readiness hearing and, unless ordered otherwise, you must make an application to the court **at least 28 days before** the trial (by way of a Form_2_Application_in_a_Case with an Affidavit in support). Specific information must be included in the affidavit when seeking permission to attend a trial by electronic communication.

The court may order that one or both of the parties pay the cost of using the facilities.

If you attend court by electronic communication, make sure that you are in a quiet place, away from distractions.

You are not allowed to record any part of a hearing or conference.

How does the Family Court contact me?

You must always let the court know your current contact address and telephone number. If you change your contact address or telephone number before your case is finished, you must file and serve a new Form 8 Notice of Address for Service. If you do not let the court know your current contact details, you may miss important communications and your next court event may proceed without you.

What should I wear to court?

You should dress comfortably. The minimum standard of dress is neat casual, which includes appropriate footwear. No hats or sunglasses should be worn in the courtroom.

What should I take with me to court?

- Copies of all documents that:
    - You have filed and served.
    - You have received from the other party during the proceedings.
    - Have been provided to you by the court.

  These should be organised so that you can find any document easily.
- Any other documents that you want to use, such as a document to put to a witness in cross-examination.
- All of the documents you have disclosed and all disclosure documents you have received from any other party.
- Pens and paper.

Who can come to court with me?

You can bring people to the court to support you, but they might be asked to wait outside the court room. If your support people and witnesses are inside the court room, they should sit in the gallery at the back. Hearings are open to the public unless the judicial officer orders otherwise.

Conferences, including conciliation conferences, are held in a conference room and can only be attended by the parties, their legal representatives and court staff.

Persons under 18 years of age are not allowed in the court room without permission from the judicial officer. The court has a Child Minding Service between certain hours.

During a trial, the judicial officer will usually make an order requiring all witnesses to remain out of the court room until they have given their evidence. You or the other party can request that such an order be made. Once the witness has given their evidence, they may remain in the courtroom for the remainder of the trial.

What time should I get to court?

You should be ready and waiting at the Family Court **at least 15 minutes before** the listed start time of your hearing. If you have not attended the Family Court previously, it is advisable to allow plenty of time to secure parking and locate the relevant court room. Due to a shortage of court rooms, cases will occasionally be heard in another court building near the Family Court.

When you arrive, you should go to the reception desk on the floor where your case is listed to be held. All cases listed each day are displayed on electronic noticeboards around the court and near the reception desks. In the event the reception desk is unstaffed, please wait on a seat outside your court room, ready for when your matter is called.

Your case might not be called until after the time it was listed, so make sure you are able to remain at court until your case has been heard.

How should I behave in court?

- When your case is called, you should go into the court room and go up to the long table closest to and facing the judicial officer and their staff (this is the "bar table").
- If you are the applicant, at the bar table you sit behind the right-hand microphone. The respondent sits on the left of the bar table. If an Independent Children's Lawyer has been appointed in your case, they will sit at the centre of the bar table.
- When the judicial officer enters the court, you should stand and remain standing until told to be seated by the court officer.
- You should bow your head slightly to the judicial officer as they take their seat at the bench. If you need to enter or exit the court room, it is a courtesy to briefly bow towards the judicial officer if they are present.
- You should call the judicial officer "your Honour", "Sir" or "Ma'am".
- If you are referring to a judicial officer when speaking to a witness, refer to the judicial officer as "his Honour" or "her Honour".
- Do not speak when the judicial officer is speaking.
- You should stand when speaking to the judicial officer, unless you have been advised it is acceptable to remain seated while speaking. Only one of the parties should be speaking at one time.
- You should also stand when you are examining or cross-examining a witness.
- When you are speaking, remain behind your microphone. The microphones are used to record the proceedings. They do not amplify your voice, so try to speak in a manner that is clear and precise so everyone in the courtroom can hear you.
- If you want to show a document to a witness or the judicial officer, say so and hold it out for the court officer to take it to them.
- Do not interrupt the other party (unless you are engaging in cross-examination, in which case you may interrupt if they are not answering the question you have asked or are giving evidence that you consider is legally inadmissible).
- No food or drink is allowed (including chewing gum). Water is usually provided.
- Mobile telephones must be switched off, not placed on silent, because they may interfere with the recording of the proceedings. If you need to refer to your telephone for some purpose in the hearing, you must ask permission from the judicial officer.
- UNDER NO CIRCUMSTANCES are you to record or photograph any part of the proceedings by any means whatsoever.
- A court officer may be able to help if you have questions about what to do, but they are not legally trained and cannot give you legal advice.

3. The relevant law for property settlement

The relevant law to be applied in applications for property orders is set out in Part VIII of the *Family Law Act 1975* (Cth) ("**FLA**") if the parties were or are married to each other, or Part 5A of the *Family Court Act 1997* (WA) ("**FCA**") and Part VIIIC of the FLA (in relation to superannuation) if the parties were in a de facto relationship. The intention of a property settlement is to end the financial relationship between the parties.

A judicial officer can only make a property settlement order if they are satisfied in all the circumstances that it is just and equitable to do so. Property settlement applications are often determined by following this four-step process:

1. Identify and value the assets and liabilities of the parties, and their legal and equitable interests in that property.
2. Assess the contributions made by each party and decide what percentage of the property each party should receive based on these contributions.
3. Make any further adjustment after considering various matters including the parties' future needs.
4. Determine whether the proposed orders are just and equitable.

Your affidavit evidence is very important in assisting the judicial officer to deal with the first three steps.

Step 1 – Identifying and valuing the property

The judicial officer needs to identify and assign a value to the assets, liabilities and financial resources held by the parties as at the time of trial.

Each party is required to file a Financial Statement Form 13. The Financial Statement is an affidavit, so you must swear or affirm that its contents are true. A Financial Statement Kit is available to assist with preparing the Financial Statement.

Property can include real estate, furniture, cars, boats, money, businesses and shares, amongst other things.

Superannuation is also taken into account, and can be treated as property in Family Court proceedings. You can obtain information about the other party's superannuation entitlements from the ATO or from their superannuation fund. The court can make superannuation splitting orders to divide parties' superannuation interests or entitlements.

The judicial officer must take into account all property in which the parties have an interest. This includes property that is held in one party's name or in joint names; property held in trusts, companies or other entities; and property that is located interstate or overseas.

The judicial officer will normally require evidence of the value of all of the property as at the time of the trial. If you and the other party cannot agree on the value of an item of property, a qualified valuer should value it. The valuer needs to provide an affidavit attaching their valuation report (see information below about expert witnesses). "Market appraisals" are usually not admissible as evidence of value.

The court must also consider any "financial resources". The concept is difficult to explain, and if you are in any doubt about its relevance you should seek legal advice. In general terms, a "financial resource" is something of actual or potential value which cannot presently be treated as an item of property.

Step 2 – Contributions

Once the judicial officer has ascertained the assets, liabilities and financial resources, they must then consider the contributions made up until the time of trial.

The judicial officer will consider the following types of contributions:

- Direct and indirect financial contributions, including property brought into the relationship; and wages, gifts and inheritances received after the relationship commenced.
- Non-financial contributions such as work done to improve or maintain property.
- Contributions to the welfare of the family, including contributions as a homemaker and parent.

No type of contribution is necessarily more important than another type of contribution.

Your affidavit and your witness's affidavits must provide evidence about the contributions you and the other party have made.

The legislation relevant to this step is s 79(4)(a)-(c) FLA / s 205ZG(4)(a)-(c) FCA (see **Appendix A**).

Step 3 – Further adjustment

Having decided what division of assets should be made based on contributions, the judicial officer will decide whether an "adjustment" should be made.

The judicial officer must consider a variety of matters in deciding whether to make an "adjustment". Many of these relate to the future of the parties, such as their income earning capacity and responsibilities for caring for any children.

Your affidavit must address all of the relevant matters, even if you do not propose any "adjustment".

The relevant matters are set out in s 79(4)(d)-(g) FLA / s 205ZG(4)(d)-(g) FCA (see **Appendix A** and **Appendix B**).

Spousal maintenance

If you cannot meet your reasonable expenses from personal income or assets, there may be an obligation on the other party to pay maintenance if they can afford to do so. For example, a person may be unable to support themselves adequately because:

- They have responsibility for the care of a child who is under 18 years of age.
- Their age or state of health prevents them from gaining appropriate employment.

The judicial officer will not consider making an order for spousal maintenance unless you have sought an order for maintenance. If an order is sought, your affidavit evidence must address the factors listed in s 75(2) FLA / s 205ZD(3) FCA (see **Appendix B**).

4. Preparation for trial

Affidavits

Your affidavit for trial should only contain facts relevant to your case, not arguments or opinions.

Procedural orders provide when an affidavit may be filed. An affidavit is a formal written statement that sets out the facts of your case and your evidence. You must swear or affirm that the contents of the affidavit are true. When you say something in an affidavit, it is as serious as saying it directly to the judicial officer while you are in the witness box in court. The following points are important:

- You are only allowed to file an affidavit with permission from the court, unless you are filing it with an application or response.
- A person under 18 years of age is not allowed to give evidence orally or by affidavit without permission from the court.
- Affidavits should usually only contain factual information about which the writer has personal knowledge. Affidavits should not contain opinions about a fact, unless the person swearing the affidavit is an expert. If another adult has personal knowledge of an important fact, you should try to obtain an affidavit from them.
- Affidavits must be typed. Each paragraph must be numbered, and each paragraph must, as far as possible, cover one particular fact or event.
- All affidavits must be sworn or affirmed before a justice of the peace, experienced lawyer or notary.
- If you want a witness to give evidence, they should provide an affidavit; they can only give oral evidence instead if the judicial officer gives permission, or if the witness refuses to sign an affidavit. You may have to subpoena a witness to ensure that they attend the trial.
- The judicial officer can make an order striking out any part of an affidavit that is irrelevant, or otherwise improper. This means that the affidavit is treated as if the improper parts do not exist. If you think words should be struck out of an affidavit filed on behalf of the other party, you need to state your objection in writing to the court and the other party **at least 14 days before the trial**.

By the time you get to trial, you and the other party may have sworn or affirmed multiple affidavits, but you cannot use all of them as evidence at trial. You must make sure that all the evidence you want the judicial officer to receive is in your trial affidavit. Similarly, a new affidavit is required for each witness, unless permission has been given to rely on an affidavit provided for an earlier hearing.

If the other party has given notice that they want to cross-examine one of your witnesses, it is important that the witness is present at the trial.

All the facts you want the judicial officer to take into account must be set out in your affidavit and the affidavits of your witnesses. In all cases, the judicial officer will need to know a brief history of the relationship between the parties. In particular, you should include:

- The date when you and the other party began living together and/or married.
- The date of final separation and the dates of any other significant separation(s).
- The date of the divorce if you have been divorced.
- The date of birth of each party.
- The name(s) and date(s) of birth of any children who lived with you and the other party during the relationship.

- A financial history of the relationship, including all the facts relevant to **Steps 1, 2 and 3**.

Disclosure

Each party has a duty to give full and frank disclosure of all information relevant to the case in a timely manner. The rules of court set out what must be done in order to comply with this duty. There may be serious consequences if you fail to comply with the duty of disclosure.

Please be aware that the judicial officer does not automatically receive all documents that have been disclosed by either party. If you wish to rely on disclosed evidence to support your case, you must ensure that it is part of your evidence, either by annexing it to an affidavit that has been filed, or by tendering it into evidence at trial.

Service

Whenever you file a document at the Family Court, a copy of that document must be served on each other party.

If a document that has been filed is not served prior to the next court date, your matter may be adjourned to allow the other party time to respond to the document.

If you have been served with documents from the other party and do not appear at the next court date, the case may proceed without you and orders may be made without you being present.

The way you serve a document on another party will depend on the type of document that you have filed.

What orders do I want the court to make?

The judicial officer is not obliged to grant the orders that either party is seeking. The judicial officer has the power to make any orders they consider are appropriate when applying the law to the facts of your case.

It is important that you, the other party and the judicial officer clearly understand the orders that you want the court to make.

You should consider whether you still seek the orders set out in your original application or response. If you want to amend your orders sought, you will need to file an Amended Application or Response. You may need to seek permission from the judicial officer to do so, depending on the stage of the proceedings. If the other party has no objection, the judicial officer will generally allow your amendment. However, your chances of having the amendment allowed are better if you give the court and the other party plenty of notice.

If you change the orders that you want at short notice, you may be ordered to pay the other party's costs; for example, if they spent money preparing for a trial in respect of orders that you no longer want.

Getting witnesses to produce documents and/or attend at trial

Subpoena

If a person can provide the court with information or documents that will help your case, you can ask the court to issue a subpoena using a subpoena_Form_14. A subpoena can require a person to either:

- Provide documents.

- Give evidence.
- Provide documents and give evidence.

You should seek leave from the court for the issue of any subpoena to give evidence as soon as possible after the trial date is allocated.

For a subpoena to produce documents, the subpoena cannot be issued after the readiness hearing without requesting leave of the court.

To seek leave you should lodge the subpoena together with a letter to the Principal Registrar explaining:

- Why the evidence is relevant to your case.
- What, if any, attempts you have made to obtain the evidence from the other party or by other means.
- Whether the person that you want to subpoena has consented to the subpoena being issued.
- Any other matter which may assist in determining whether to grant leave for the issue of the subpoena.

If the court issues the subpoena, it must be promptly served on the person you wish to subpoena. If you require the subpoenaed person to attend the trial, you must give them conduct money to cover the cost of travelling to the court.

It is important to understand that any document lodged with the court under a subpoena does not automatically become part of the evidence. If you want the court to receive the document as evidence, you must seek to tender it in evidence during the trial. Parties have automatic permission to photocopy most subpoenaed documents in financial matters, and you should make copies of any of those documents that you intend to tender, so there are copies for the witness, each other party and the judicial officer. If you do not have permission to photocopy the documents, you should note which documents you wish to tender at the trial and ask the court to make the subpoenaed documents available at the trial for you to refer to. There are rules about whether documents produced under subpoena can be received as part of the evidence.

Notifying your intention to cross-examine

If you want to question any of the other party's witnesses at trial, you should make this known at the readiness hearing.

Each party should confirm their intention to question witnesses by giving the other party a written notice, **at least 14 days before the trial**, stating the name(s) of the person(s) required to attend the trial for cross-examination.

Each party must ensure that all of their witnesses required for cross-examination are present at the trial. If the witness does not attend, the court may refuse to consider their affidavit, limit the use of the affidavit or adjourn the proceedings.

If a witness is not required for cross-examination, the judicial officer is entitled to assume that their evidence is accepted as being accurate.

Expert witnesses

Qualified expert witnesses (such as business and property valuers) may provide independent evidence to help the judicial officer decide an issue in dispute. The court will generally allow evidence from only one expert witness in relation to a specific issue.

If an expert opinion is necessary in your case, you and the other party should endeavour to agree to jointly instruct a single expert witness to prepare a report for the court. Parties are equally responsible for payment of the single expert witness's fee, unless the court orders otherwise or the parties agree otherwise.

If you and the other party cannot agree on a single expert witness, you should apply to the court as soon as possible.

Expert witnesses will require you and/or the other party to pay their expenses for their time at court. To limit the costs associated with an expert witness waiting at court, you may ask the judicial officer if the witness can give evidence at a specific time. You should make this request at the earliest opportunity.

Joint schedule of assets and liabilities

Orders will often be made requiring the parties to file a joint schedule of assets, liabilities and financial resources. This document should be filed **at least two days before trial**, unless the judicial officer specifies a different time. The schedule must contain what each party says is the composition and value of all of the property of the parties, and clearly identify the areas where the parties agree or disagree.

This schedule is very important because it assists the judicial officer in identifying the property (**Step 1**) and determining the extent of the dispute.

Papers for the judicial officer

You may be ordered to file and serve Papers for the Judicial Officer prior to the trial. In property matters, Papers for the Judicial Officer consist of:

- A chronology of relevant events.
- A list of the affidavits and other court documents that you intend to rely on.
- A list of the authorities (legal precedents) that you intend to rely on (if any).
- A schedule of the current assets, liabilities and financial resources of each party, including their values.
- A short statement, in point form, of the contributions made by each party during the relationship and since separation (see **Step 2 – Contributions**).
- A statement of the division of the property that you propose based on the contributions. This should be expressed as a percentage of the net value of the property. For example, "I say that the contributions made by both parties up to the date of separation were equal, but taking into account the renovations I did to the house after separation, I say my overall contribution was 55%".
- A short statement, in point form, of the relevant factors in s 75(2) FLA / s 205ZD(3) FCA (see **Step 3 – Further adjustment**). If you consider these factors do not warrant any "adjustment" being made, you should say so. If you propose there should be some adjustment, you should say what you consider it should be, expressed as a percentage. For example, "I propose an adjustment of 10% in favour of the other party because they will be caring for the children full-time and will not be earning an income".
- A short statement of the issues you consider the judicial officer will need to decide, and the issues that have been agreed. These will usually relate to the matters mentioned in **Steps 1, 2 and 3**.

You should use the court's template to prepare your Papers for the Judicial Officer. The template can be found on the court's website at Papers for the Judicial Officer.

Guides for how to complete the Papers for the Judicial Officer can be found on the court's website at Papers for the Judicial Officer.

The Papers for the Judicial Officer are not evidence. They are designed to assist the judicial officer to understand the issues that need to be decided, and must only refer to matters set out in the affidavit evidence.

5. When will my trial be held?

If you and the other party are unable to reach an agreement, your case will need to proceed to a trial. The judicial officer will make directions setting out what needs to be done before the trial, such as the filing and service of trial affidavits. Before a trial date is set, there will usually be a readiness hearing.

The readiness hearing

The readiness hearing is a procedural hearing to make sure your case is ready for trial. You will be given notice of the date of your readiness hearing at least two months prior.

Readiness hearings are usually conducted by the managing magistrate or a registrar. A readiness hearing is not an opportunity to negotiate, and the judicial officer will not assist in settlement discussions at this hearing. However, if the parties arrive at the readiness hearing with an agreement, the judicial officer can make orders by consent.

If your matter has been included in the Priority Property Pools under $500,000 Cases program (PPP500 cases), there will be a streamlined pathway to trial should your matter not settle at the Conciliation Conference.

How to prepare for the readiness hearing

It is very important that you file all your affidavits on time.

At previous court appearances, the judicial officer would have made procedural orders telling you what you need to do prior to your readiness hearing. Generally, the procedural orders will provide a timetable for the filing and service of trial affidavits and other documents.

At least seven days before the readiness hearing (unless earlier directions state otherwise), each party must file and serve an Undertaking as to Disclosure (with a list of the documents disclosed attached), confirming that they have complied with their duty of disclosure.

It is very important that you understand your duty of disclosure.

At the readiness hearing you should be ready to answer questions about:

- The main issues of fact or law relevant to your case.
- Whether you have complied with all previous orders, including in relation to the filing of your documents for trial.
- How many witnesses will be needed at trial, and which of the other party's witnesses you intend to cross-examine.
- The likely length of the trial.
- Whether interpreters are required for the trial.
- Whether telephone or video link facilities will be required.
- Whether a bring-up order is required for a witness who is in prison.
- Whether an order should be made for a ban on cross examination to apply in your matter at trial.

What happens at the readiness hearing

If the judicial officer decides the matter is ready and the parties have filed all their documents, then your case will be sent to callover.

If one party has failed to file their documents on time, the judicial officer may still place the matter into the callover for a trial date to ensure that the party who has complied will not be prejudiced. Alternatively, the judicial officer may refer the matter to the duty judge or duty magistrate for orders,

including orders striking out the defaulting party's application or response and giving the other party permission to proceed with the case as if it is undefended.

If both parties have failed to file their documents by the readiness hearing, the case may be sent to the duty judge or duty magistrate, who may make further procedural orders dismissing the case.

Callover

You should attend the callover in person but you may seek to attend by electronic communication by filing the relevant form.

Not later than 7 days prior to the callover you must file a Callover Certificate. The callover is conducted by a judge. It can take up to an hour because many cases are allocated trial dates in each callover. You, or your legal representative, should attend with a list of all dates when you or your witnesses will be unavailable to attend trial for the period directed by the court previously, but at least in the following 6 to 8 months, which should also have been included in the Callover Certificate and filed 7 days prior to the callover hearing.

You will need to listen carefully for your name to be called by the judge. When your name is called, you must make your way promptly to one of the microphones. The judge will suggest a trial date and you have to advise quickly whether that date suits you and your witnesses. There is no time at the callover to deal with any issues other than the allocation of the trial date.

Sometimes there are insufficient trial dates for all cases in the callover, or the dates available may be unsuitable. If this happens, your case is likely to be stood over to the next available callover, which could be in about one or two months.

The date allocated for trial is likely to be a number of months after the callover but could be much earlier, and is subject to the availability of court resources. Your trial will usually be listed to a "not before" date, which means your trial will not start before that date, but it may start on or after that date, depending how long it takes the court to finish other trials listed before yours.

If you have been given a "not before" trial date, it is important that you contact the court after 2pm on the day before the allocated trial date, to find out when it is expected that your trial will start. If your trial does not start on time, it may start in the following days at very short notice. You should warn your witnesses and support people that the trial may be delayed, and that some flexibility of availability may be required on their part.

If you want a fixed starting date for your trial, you must request this at the readiness hearing or note it on your Callover Certificate. Generally, fixed starting dates are only given where parties or witnesses have to travel from interstate or overseas for the trial.

At callover you will be told the name of the judicial officer who will be conducting your trial; however, the case may be moved to another judicial officer closer to the trial date.

What if we reach an agreement after the trial date is set?

You and the other party can resolve your matter by agreement at any time before the delivery of judgment, including before and during the trial. If you reach an agreement, you should inform the court as soon as possible, so the court's time is not wasted.

To formalise your agreement, you should file or hand up a Minute_of_Consent_Orders signed by each party, setting out the terms of the agreement. If the judicial officer is satisfied that the agreement is just and equitable, consent orders will be made (do not file an Application for Consent Orders – Form 11 if you already have current proceedings).

6. What happens during the trial?

The judicial officer will manage the conduct of the trial. If you are unsure how to proceed at any stage, do not be afraid to ask the judicial officer. The judicial officer may intervene to assist you, or to move the proceedings along by reminding you to focus on relevant issues. It is important to remember that the judicial officer is not your lawyer, and cannot give you any legal advice.

Order of proceedings

After the judicial officer deals with any preliminary administrative issues that need attention, the usual order of proceedings is as follows:

Applicant's case

1. Applicant makes opening address (if the judicial officer permits).
2. Applicant calls first witness (usually the applicant themselves).
3. Applicant's witness gives evidence.
4. Respondent may cross-examine that witness.
5. Applicant may re-examine that witness (only about matters arising out of cross-examination).
6. Applicant calls next witness.
7. Repeat steps 3 to 6 until Applicant has called all witnesses.

Respondent's case

8. Respondent makes opening address (if the judicial officer permits).
9. Respondent calls first witness (usually the respondent themselves).
10. Respondent's witness gives evidence.
11. Applicant may cross-examine that witness.
12. Respondent may re-examine that witness (only about matters arising out of cross-examination).
13. Respondent calls next witness.
14. Repeat steps 10 to 13 until Respondent has called all witnesses.

Closing addresses

15. Respondent makes closing address.
16. Applicant makes closing address.

Opening address or statement

At the start of your case, you may be invited by the judicial officer to make a brief "opening address" or "opening statement". Although you do not have to do this, it is an opportunity to outline your case.

In your opening address, you should briefly outline the issues to be decided and the orders you want. You should then indicate the significant matters that you intend to establish in presenting your case and the evidence that you will rely on.

You may ask the judicial officer for an order for "witnesses out of court". This means that all the witnesses, except you and the other party, have to stay outside the courtroom until they give their evidence. It also prevents the witnesses from discussing the case until they have given their evidence.

Remember that what you say during your opening address is not part of the evidence. The only evidence the judicial officer will consider is what has been said in affidavits or in the witness box.

How do I give my own evidence?

When it is your turn to give evidence, the court officer will show you to the witness stand. Take an unmarked copy of your affidavit, some paper and a pen with you. If there is anything else you think you will need, ask the judicial officer for permission before taking it with you. The court officer will lead you through the oath or affirmation, and then the judicial officer will help you commence your evidence by asking you to confirm the truth of your trial affidavit. You will be given a chance to correct any errors in your affidavit.

You generally will not be allowed to provide any further evidence to the judicial officer, unless the evidence could not have been included in your affidavit. For example, the judicial officer may allow you to give evidence about matters that arose after your trial affidavit was filed, but you must seek leave to do so.

If you wish to respond to matters raised in the affidavits of the other party that are not covered in your trial affidavit, you should ask for permission to do so before you are cross-examined by the other party.

Calling witnesses and their evidence

When it is time for your next witness to give evidence, tell the judicial officer the name of the witness you want to "call". The court officer will then "call" the name of the witness outside the courtroom and direct them to the witness box.

All the evidence from your witnesses should be in their affidavits. Therefore, you simply have to ask them their name, address and occupation, and whether their affidavit is true and correct. However, you may ask the judicial officer for permission to ask your witness further questions before they are cross-examined, if for example:

- Important evidence has been left out.
- Important events have occurred since the affidavit was filed.
- There are errors in the affidavit.
- You want the witness to give evidence about matters raised in the affidavits filed by the other party, or about matters that have come up in evidence during the trial.

If the witness you have called refused to give an affidavit, you may ask the judicial officer for permission to have them give oral evidence. If permission is granted, you may then ask the witness a series of questions to allow them an opportunity to give the evidence you consider is relevant to the case.

When you are asking questions of your own witness, you are not permitted to "lead" them – in other words, you may not ask a question in a way that infers the answer you want them to give. For example, you should ask, "What did you do on Monday?" rather than "You went to the shops on Monday, didn't you?"

How do I cross-examine a witness?

Cross-examination is not an opportunity for you to harass, embarrass or belittle a witness.

Personal cross-examination is where a party asks questions of another party or witness directly, rather than having questions asked by a lawyer.

Personal cross-examination of a party by the other party is now banned in Family Court proceedings in certain circumstances where allegations of family violence have been raised by either of those parties. The ban may be applied automatically or the court may use its discretion to impose a ban.

The ban exists because personal cross-examination by an alleged perpetrator can expose victims of family violence to re-traumatisation and affect their ability to give clear evidence.

For further information as to the ban on personal cross-examination in Family Court proceedings, see the Cross Examination page on the court's website.

If you do not dispute a witness's evidence, there is no need to cross-examine them. If you do not cross-examine a witness about something they said in their affidavit or oral evidence, it is open to the judicial officer to conclude that you do not dispute it.

When cross-examining a witness, you should ask questions and not make statements. Although you cannot ask "leading questions" of your own witnesses, it is quite permissible to do so when you are cross-examining the other party's witnesses. For example, you can ask "You went to the shops on Monday, didn't you?" as opposed to "What did you do on Monday?"

Each question asked in cross-examination should be brief and directed at one point at a time. You should plan your cross-examination in advance, but be ready to modify your plan as you listen to the answers. Your aim is to show the court that the witness's evidence should not be accepted because they are mistaken, or cannot authoritatively say the things they have said.

If you allege something different from a witness, it is important that you put your version of events to them. For example, you could say: "My evidence is that I had $25,000 in the bank when we commenced our relationship. This is true, isn't it?"

In cross-examination, you can present to the witness any document that you consider contradicts their evidence. For example, you may have records that show they earned less during the relationship than they claimed. If you intend to show the witness a document, you should have copies for the witness, each other party and the judicial officer.

Your cross-examination of a witness is not limited to the evidence given by the witness, but any questions should be relevant to:

- The matters in dispute.
- The considerations that the judicial officer must take into account.
- The witness's credibility.

While your witnesses are being cross-examined, you should make notes, especially of things you wish to raise in re-examination.

If the trial is adjourned while a witness is giving evidence or being cross-examined, you must not discuss their evidence with them. It is therefore safest to avoid talking to the witness at all in any adjournment, including lunch breaks.

How do I re-examine a witness?

Once the cross-examination of your witness is finished, the judicial officer will ask whether you want to re-examine the witness.

Re-examination is only allowed about matters that came up in cross-examination. It is not an opportunity to have a witness repeat something they have already said clearly in evidence. It is an opportunity to clarify evidence that was unclear; correct obvious errors; or give the witness a chance to give a full answer where they may have been cut off during cross-examination. Once again, you cannot ask your own witness any "leading questions".

Closing address or statement

Once you and the other party have presented all of the evidence, you will each have an opportunity to make a "closing address" or "closing statement".

If there is important disputed evidence, you should explain to the judicial officer why they should accept the evidence on which you are relying. You should outline the findings of fact that you want the court to make and explain to the judicial officer why they should make the orders that you want.

Ideally you will relate your closing remarks to the legislation in the appendices of this guide and mention any relevant precedents. However, the judicial officer knows you are not a lawyer and will understand if you cannot do this.

7. When is judgment given?

The judicial officer may give judgment orally and make orders at the end of the closing addresses. This may be after a short adjournment to give the judicial officer a chance to review the evidence. If the judgment is given this way, you may request a written copy of the reasons for judgment, which will be sent to you after the judicial officer has checked them.

Alternatively, the judicial officer may reserve their decision to a later date. The court will inform you when the judgment is ready to be delivered and whether you need to attend. The judicial officer may want the parties to attend if they want further input in relation to the details of the orders to be made.

If you are not required to attend court for the delivery of the judgment, you will be notified when a copy of it will be available via the eCourts Portal.

8. Where can I go for advice?

Information about where to obtain legal advice can be found on the Legal Advice page on the court's website.

9. Legal information on the internet

To access legal information (not advice) on the internet you might try the following websites:

Family Court of Western Australia You can download court forms and brochures from this website. You can also access the daily court list and the court's Case Management Guidelines. The site also provides answers to frequently asked questions.	familycourt.wa.gov.au Legal Resources Brochures and Kits Forms Legal Services Directory Family Court Legislation
Attorney General - Commonwealth This site is provided by the Commonwealth Attorney General's Department and gives you access to legal information	www.ag.gov.au
Legal Aid Western Australia Legal Aid WA has programs called "When Separating", "Roads to Resolution" and "Amica".	legalaid.wa.gov.au amica.gov.au

Appendix A – Contributions

Family Law Act 1975 (Cth) (married) / *Family Court Act 1997* (WA) (de facto)

The provisions below are taken from the *Family Law Act* 1975 (Cth). The equivalent provisions of the *Family Court Act 1997* (WA) are substantially the same except:

- "Party to the marriage" should be read as "de facto partner".
- "Marriage" should be read as "relationship".

Section 79(1) / Section 205ZG(1)

In property settlement proceedings, the court may make such order as it considers appropriate:

(a) in the case of proceedings with respect to the property of the parties to the marriage or either of them – altering the interests of the parties to the marriage in the property; or

(b) in the case of proceedings with respect to the vested bankruptcy property in relation to a bankrupt party to the marriage – altering the interests of the bankruptcy trustee in the vested bankruptcy property;

including:

(c) an order for settlement of property in substitution for any interest in the property; and

(d) an order requiring:

(i) either or both of the parties to a marriage; or

(ii) the relevant bankruptcy trustee (if any);

to make, for the benefit of either or both of the parties to the marriage or a child of the marriage, such settlement or transfer of property as the court determines.

Section 79(4) / Section 205ZG(4)

In considering what order (if any) should be made under this section in property settlement proceedings, the court shall take into account:

(a) the financial contribution made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of that last-mentioned property, whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the marriage or either of them; and

(b) the contribution (other than a financial contribution) made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of that last-mentioned property, whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the marriage or either of them; and

(c) the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of homemaker or parent; and

(d) the effect of any proposed order on the earning capacity of either party to the marriage; and

(e) the matters referred to section 75(2) / 205ZD(3) so far as they are relevant [see **Appendix B**]; and

(f) any other order made under this Act affecting a party to the marriage or a child of the marriage; and

(g) any child support under the *Child Support (Assessment) Act 1989* that a party to the marriage has provided, is to provide, or might be liable to provide in the future, for a child of the marriage.

Appendix B – Matters to be taken into account

Family Law Act 1975 (Cth) (married) / *Family Court Act 1997* (WA) (de facto)

The provisions below are taken from the *Family Law Act 1975* (Cth). The equivalent provision in the *Family Court Act 1997* (WA) is substantially the same except:

- "Party to the marriage" should be read as "de facto partner".
- "Marriage" should be read as "relationship".

Section 75(2) / Section 205ZD(3)

The matters to be so taken into account are:

(a) the age and state of health of each of the parties; and

(b) the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment; and

(c) whether either party has the care or control of a child of the marriage who has not attained the age of 18 years; and

(d) commitments of each of the parties that are necessary to enable the party to support:

(i) himself or herself; and

(ii) a child or another person that the party has a duty to maintain; and

(e) the responsibilities of either party to support any other person; and

(f) subject to subsection (3), the eligibility of either party for a pension, allowance or benefit under:

(i) any law of the Commonwealth, of a State or Territory or of another country; or

(ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Australia;

and the rate of any such pension, allowance or benefit being paid to either party; and

(g) where the parties have separated or divorced, a standard of living that in all the circumstances is reasonable; and

(h) the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income; and

(ha) the effect of any proposed order on the ability of a creditor of a party to recover the creditor's debt, so far as that effect is relevant; and

(j) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party; and

(k) the duration of the marriage and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration; and

(l) the need to protect a party who wishes to continue that party's role as a parent; and

(m) if either party is cohabiting with another person — the financial circumstances relating to the cohabitation; and

(n) the terms of any order made or proposed to be made under section 79 in relation to:

(i) the property of the parties; or

(ii) vested bankruptcy property in relation to a bankrupt party; and

(naa) the terms of any order or declaration made, or proposed to be made, under Part VIIIAB in relation to:

(i) a party to the marriage; or

(ii) a person who is a party to a de facto relationship with a party to the marriage; or

(iii) the property of a person covered by subparagraph (i) and of a person covered by subparagraph (ii), or of either of them; or

(iv) vested bankruptcy property in relation to a person covered by subparagraph (i) or (ii); and

(na) any child support under the *Child Support (Assessment) Act 1989* that a party to the marriage has provided, is to provide, or might be liable to provide in the future, for a child of the marriage; and

(o) any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account; and

(p) the terms of any financial agreement that is binding on the parties to the marriage; and

(q) the terms of any Part VIIIAB financial agreement that is binding on a party to the marriage.

Section 75(3) / Section 205ZD(4)

In exercising its jurisdiction [in relation to spousal maintenance], a court shall disregard any entitlement of the party whose maintenance is under consideration to an income tested pension, allowance or benefit.

Appendix C – De facto relationships

The following is a summary of the relevant legislation.

It is recommended that you look at the full text of the relevant sections: *Interpretation Act 1984* (WA) s 13A and *Family Court Act 1997* (WA) ss 205U, 205X and 205Z.

A de facto relationship is between two people who live together in a marriage-like relationship. The court will look at:

- The length of the relationship.
- Whether they have lived together.
- The nature and extent of their common residence.
- Any sexual relationship.
- Any financial dependence or interdependence.
- Their ownership, use or acquisition of property.
- The degree of mutual commitment to a shared life.
- Whether they care for or support children.
- Their reputation and public aspects of their relationship.

De facto relationships can be between people of the same sex or the opposite sex. You can be married to one person and be in a de facto relationship with another person.

For the Family Court of Western Australia to have jurisdiction in a de facto case, one or both of the parties must have been resident in Western Australia on the day that the application was made, and either:

- Both parties must have lived in Western Australia for at least one third of the duration of the de facto relationship.
- The applicant must have made substantial contributions in Western Australia.

You can only bring an application for property orders in relation to a de facto relationship in Western Australia if either:

- There has been a de facto relationship for at least 2 years; or
- There is a child of the relationship under 18 and failure to make an order would result in serious injustice to the partner caring or responsible for the child; or
- The applicant made substantial contributions and failure to make the order sought would result in serious injustice.

Guide to legal terms

Set out below are explanations of some legal terms. Most of the terms are used in this guide, but some are words or expressions you may hear during your trial.

Admissible evidence

Not all evidence that is relevant is allowed to be put before the judicial officer. There may be legal reasons why some evidence cannot be admitted into evidence. You should seek legal advice if you have any doubt about the admissibility of evidence.

Affidavit

A formal written statement that is sworn or affirmed before a justice of the peace, experienced lawyer or notary, which sets out the facts of the case (the evidence).

Applicant

The person who begins the proceedings by filing an application.

Callover

A procedural hearing where a number of cases are allocated trial dates by a judge.

Conciliation Conference

At the first court event, the court will make orders to ensure any outstanding disclosure and valuation issues are dealt with, and order the parties to thereafter attend a conciliation conference conducted by a registrar.

Case Management Guidelines

Guidelines or directions issued by the court that specify certain matters of procedure and practice.

Chronology

A list of significant events and the dates on which they occurred, in date order.

Conduct money

When a subpoena is served, the person serving it must provide the subpoenaed person with sufficient money to cover return travel by public transport from the person's place of work or residence to the court, and a reasonable allowance for accommodation and meals during the estimated time of attendance at the hearing or trial (currently no less than $25).

Costs order

When the court orders that one party must pay all or part of the other party's costs of preparing and/or presenting their case.

Disclosure

A process where one party provides the other party with a list of relevant documents in their possession, power or control.

Disclosure documents

Documents that you have in your possession, power or control that are relevant to your case must be disclosed to all other parties. "Possession, power and control" is a legal term which covers more than documents in your physical possession. Seek advice if you have questions about your obligations.

Expert witness

An expert is an independent person who has relevant specialised knowledge, based on their training, study and/or experience. An expert witness is an expert who has been instructed, in

writing, to provide their opinion about a substantial issue in dispute. Important rules about expert evidence are contained in the rules of court.

Family Dispute Resolution

Family Dispute Resolution (FDR) is the legal term for services (such as mediation) that help couples affected by separation and divorce to sort out family disputes. FDR can help you to agree on a range of issues relating to property and your children.

Family Dispute Resolution Practitioner

A Family Dispute Resolution Practitioner (FDRP) is an independent person who is professionally trained to help people affected by separation or divorce in resolving their family law disputes.

File

To lodge a document via the eCourts Portal of WA and have it accepted for filing by the court.

Hearing fee

This is the fee payable for trial days or hearing days. The amount of the fee changes from time to time, and is higher for a hearing before a judge than a magistrate. If the fee is not paid, the trial may not proceed.

Inadmissible evidence

Evidence that cannot be taken into account because it infringes the rules of evidence. This includes evidence that is not relevant to a fact in issue in the proceedings, and evidence that is unreliable because of hearsay.

Judicial officer

Either a judge or magistrate who is listed to hear your case. A judge usually deals with longer or more complex cases.

Leave of the court

Permission obtained from the court to do a particular thing, which would otherwise not be allowed.

Managing magistrate

The magistrate who is appointed to conduct and manage your case. Depending on the length of your trial and the complexity of your matter, the managing magistrate may conduct your trial, or the trial may be allocated to another judicial officer.

Minute of orders sought

A document setting out the orders that you want the court to make.

Notice of Address for Service

A court form which tells the court and the other party the address where documents can be served on you.

Notice to Produce

The other party may require you to bring certain documents to your trial by giving you written notice no later than 7 days before the trial. You may also require the other party to produce at the trial a specified document that is in their possession or control by written notice no later than 7 days before the trial.

Party/Parties

All applicants and respondents named on an application are parties in those proceedings. Other people may occasionally be joined as parties as the proceedings progress.

Practice directions

Directions issued by the court about practices and procedures to be followed in all cases.

Procedural/Directions Hearing

These are hearings conducted by a judicial officer or registrar. The purpose of a procedural hearing is to make orders for the future conduct of the case.

Procedural orders

These are instructions (sometimes referred to as directions) from the court about what each party must do and when. The purpose of these orders is to ensure that the case is properly prepared for each stage of the court process, so the case is resolved as quickly and cheaply as possible. Standard procedural orders are made at each stage of the court process. Other procedural orders may be made at the request of a party in a case. If procedural orders are made, you must comply with them.

Property Orders

A property order is one that can deal with the assets, liabilities, financial resources and superannuation entitlements of the parties. Before the court makes a final property order, it must determine it is just and equitable to do so.

Readiness hearing

A hearing to monitor readiness for trial.

Registrar

A judicial officer of the court who has limited decision making powers, but who makes many procedural orders.

Registry

The main office of the court, which is located at Level 1, 150 Terrace Road, Perth. Whilst all documents are now lodged on the eCourts Portal, there is a self-help kiosk in the Registry.

Respondent

The person against whom an order has been sought in an application.

Service/Serve

The legal term used to describe the giving or delivering of court documents to another person.

Setting down fee

This is the fee payable for setting down a trial and it includes the first day of trial. The fee is non-refundable. The fee is higher for a hearing before a judge than a magistrate. An order is usually made at a procedural hearing requiring the payment of the fee. If the fee is not paid, the trial may not proceed.

Submissions

Legal arguments presented to the court to persuade the court to make the orders you want.

Subpoena

A document issued by the court (usually at the request of a party), that requires a person to come to court to give evidence and/or provide documents to the court.

Sworn or affirmed

When you have made a solemn promise confirming the truth of your evidence. An affidavit must be sworn or affirmed before a justice of the peace, experienced lawyer or notary.

Tender

To present a document to the court during a hearing/trial and seek to have it admitted as evidence that you wish to rely on to prove part of your case.

Trial

The final hearing of a matter before a judicial officer.

Trial affidavit

The final affidavit filed before a trial, which should contain all relevant evidence that you want the judicial officer to consider when deciding your case.

Waiver of fees

If you hold certain Centrelink cards or can show financial hardship, you may not have to pay certain fees.