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.

Please check the Family Court of Western Australia website (www.familycourt.wa.gov.au) for latest updates and /or revisions.

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 booklet 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. Whilst the Judge or Magistrate can provide some (very limited) assistance, it is expected that each party who does not have a lawyer will have tried their best to become familiar with this booklet before coming to Court.

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

Stephen Thackray

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 he or she can provide. It is recommended that you are represented by a lawyer at trial. If that is not possible, you should at least get advice from a lawyer about your case at the earliest possible stage (see: *Where do I go for advice*).

Contents

1. Introduction

What is this guide for?

This guide is intended for people representing themselves in an application for **property orders**. There is a separate guide available for people representing themselves in parenting order cases. 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.

It is intended to provide brief information about Court procedure for cases which have already commenced.

If you are about to commence proceedings or are responding to an application, there are kits and brochures available from the Registry which outline how to proceed with preparing or opposing an application to the Court.

There are also brochures available on court procedures during the resolution stage of the application such as the Case Assessment Conference and the Conciliation Conference. (Note: Procedures in country areas may be different).

THIS GUIDE IS NOT INTENDED TO BE A SUBSTITUTE FOR PROFESSIONAL LEGAL ADVICE

If you have not yet filed an application or been served with an application you should contact the Family Relationship Advice Line or one of the other organisations listed in ***Where Do I Go For Advice?*** for advice on resolving your dispute.

This guide also contains information on the areas your evidence should cover and the matters the Court will take into account in making final orders.

A ***Guide to Legal Terms*** can be found at the end of this handbook.

Please note that it is a requirement that both parties attend an information session. You can find out where and what time they are held by asking at the Registry or on the website (www.familycourt.wa.gov.au)

The relevant legislation

The relevant legislation if you were married is the *Family Law Act 1975*. If you were in a de facto relationship, the *Family Court Act 1997* applies. You can only bring an application for property orders in relation to a de facto relationship in certain circumstances. (see ***Appendix D***).

Important sections from these Acts are set out at the back of this booklet. There are links to the full text of both Acts at the Family Court of Western Australia website. (www.familycourt.wa.gov.au)

2. About the Court

Your case will be heard in the Family Court of Western Australia by a Judge or in the Magistrates Court by a Magistrate.

How to contact the Court

You should address any correspondence to:

The Principal Registrar
Family Court of Western Australia
GPO Box 9991
Perth WA 6848

Telephone: (08) 9224 8222; 1800 199 228 (country free call)
Facsimile: (08) 9224 8360

Note: you must give the other party a copy of all correspondence you send to the Court and your correspondence must show that a copy has been sent to the other party.

Personal safety

The Court has a Family Violence policy. If you have a concern for your physical safety or the physical safety of one of your witnesses, notify the Principal Registrar in writing as soon as possible after your application or response is filed so that proper arrangements can be made. If you become concerned for your safety whilst attending Court please inform Court staff as soon as possible.

Interpreters

If you need an interpreter for yourself or a witness please contact the Court as soon as possible after your application or response is filed.

Attending by electronic communication

The Court has facilities available for people to attend Court by electronic communication, such as video-link and telephone-link. If you need to use these facilities to attend a conference, you must write to the Court **at least 7 days before the conference** to ask for permission. If you need to use these facilities at the trial you should tell the Registrar at the pre-trial conference and, unless ordered otherwise, you must make an application to the Court **at least 28 days before the trial** (An application in a case and an affidavit in support).

Specific information (see: ***Appendix C***) must be included when seeking permission to attend by electronic communication. The Court may order that one or both of the parties pay the cost of using the facilities. For more information on the Court's facilities for electronic communication, ask at the Registry.

How does the Court contact me?

You must always let the Court know your current contact address and telephone number.

If you change your contact address and/ or telephone number before your case is finished, you must file and serve a new Notice of Address for Service. If you do not let the Court know your current contact details, you may miss important communications and your trial 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.

What should I take with me to Court?

- Copies of all documents that:

  a) You have filed and served; and

  b) You have received from the other party during the proceedings.

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 your discoverable documents and any other documents in respect of which you received a notice to produce.
- Pens and paper.
- This guide.

Who can come to Court with me?

You may bring people to the Court to support you; however, they cannot join you when you are in a conference and they may be asked to wait outside the courtroom.

Conferences are held in a conference room and are attended only by the parties and their legal representatives and Court staff.

Hearings are open to the public unless the Judicial Officer orders otherwise. Persons under 18 years of age are not allowed to be in the courtroom without permission from the Judicial Officer. The Judicial Officer may make an order for all witnesses to be out of Court during any part of the hearing.

What time should I get to Court?

You should be ready and waiting at the Court at least 15 minutes before your listed time.

When you arrive, you should go to the reception desk on the floor where your case is listed to be held and report to the Court Officer.

How should I behave in Court?

- If you are the applicant, you sit behind the right hand microphone. The respondent sits on the left.
- You should always call the Judicial Officer, "Your Honour." Otherwise, "Sir" or "Ma'am" is fine.
- If you are referring to the 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.
- Stand up when you are speaking to the Judicial Officer or when the Judicial Officer is speaking to you. You should remain seated at all other times. Only one of the parties should be standing at one time.
- When you are speaking, remain behind your microphone.
- 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.
- When entering or exiting a courtroom, it is a courtesy for parties and witnesses to briefly bow their heads if the Judicial Officer is already present.
- No food or drink is allowed (including chewing gum). Water is usually provided.
- Mobile telephones and pagers must be switched off.
- A Court Officer may be able to help if you have questions about what to do, but they cannot give you legal advice.

3. The Court process

Procedural orders

At each stage in the Court process, procedural orders (sometimes referred to as directions) will be made to help you proceed with your matter. Procedural orders aim to get you and the other side ready to reach an agreement or proceed to resolution of your case. For example, a procedural order may deal with what issues should be covered by an affidavit and when it has to be filed.

You must comply with all procedural orders. Your failure to comply with procedural orders may result in a disadvantage to your case. For example a costs order may be made against you, the hearing of your case may be delayed, or your application(s) may be struck out or dismissed.

Procedural orders will be made setting the date by which you must file your documents.

The consequence for filing a document late is that the document is of no effect (as if it does not exist) and cannot be taken into account by the Court. However, a party may request permission from the Judicial Officer to have late documents taken into account.

Interim/Temporary orders

You may want to seek interim or temporary orders while your application for final orders is proceeding. Interim orders stay in place until final orders are made. The application for interim orders will normally be listed before a Magistrate.

The Case Assessment Conference/ Procedural Hearing

Your first court event will be a Case Assessment Conference or a Procedural Hearing.
The purpose of the conference/hearing is to identify the key issues in your case and determine the best way to proceed. The Registrar will make orders to help you proceed to the next stage. If agreement is reached the Registrar can make orders based on that agreement.

The Conciliation Conference

The next stage in the court process is likely to be a Conciliation Conference conducted by a Registrar. The purpose of the conference is to negotiate and attempt to reach agreement about the issues which are in dispute. You will be required to prepare a conciliation conference document which sets out your proposal for settlement and the facts on which you base your proposal. If an agreement is reached, orders will be made based on that agreement. If no agreement is reached the Registrar will make procedural orders and the case will proceed to a pre-trial conference.

The Pre-Trial Conference

Like the case assessment conference and the conciliation conference, the pre-trial conference is an opportunity to negotiate agreement(s). The pre-trial conference is conducted by a Registrar. If your case does not settle by agreement, and if the Registrar is satisfied that your case is ready for trial, the Registrar will either allocate a trial date or list your case to a callover where a Judge will allocate a trial date.

How long it takes before your trial is held will depend on, among other things, the complexity of your case, the expected length of your trial and the availability of a Judicial Officer to hear your case.

Your trial will be listed before a particular Judicial Officer and you will be given a 'not before' date. This means that your trial will not start before that date but it might start after that date, depending on how long it takes to finish other trials. It is important that you contact the Caseflow Section by calling 9224 8398 **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 the 'not before' date, it may start at short notice at any time in the following few days.

There is a limited opportunity for the Registrar to give fixed starting dates for trials. If you want a fixed starting date for your trial, you should request this at the pre-trial conference. Generally, fixed starting dates are only given where witnesses have to travel from interstate or overseas for the trial.

Once the trial date has been set, one of the parties, usually the applicant will be required to pay the hearing fee.

The Registrar conducting the pre-trial conference will make a procedural order about payment of the hearing fee. If you are unable to pay the hearing fee, you can obtain a form to seek an exemption / waiver of the fee at the Registry of the Court.

How to prepare for the pre-trial conference

At the previous court appearances, the Judicial Officer would have made procedural orders telling you what you need to do prior to your pre-trial conference.

Generally, the procedural orders will provide that **at least 21 days before the pre-trial conference**, both parties file and serve their trial affidavits. If one of your witnesses has refused to provide an affidavit, you must file a written notice stating the person's name.

At the pre-trial conference, each party should be in a position to tell the Registrar which of the witnesses who have filed affidavits they intend to cross-examine at the trial.

Unless otherwise ordered, **at least 14 days before the pre-trial conference,** the applicant must file and serve a chronology of significant events.

- The chronology should include the dates of birth of both parties and any children; the date when you began living together and/or married; the date of final separation; and the date(s) of any significant separation(s).
- You should include in your chronology significant financial events such as the purchase of property, inheritances and damages awards.
- If the respondent disputes matters in the chronology, they will be required to provide a schedule after the pre-trial conference identifying the points of difference.
- If the chronology is agreed, a joint chronology may be filed.

At least 7 days before the pre-trial conference each party must give an up-to-date conciliation conference document to the other party and provide a copy to the Court.

At least 7 days before the pre-trial conference, each party must file a written notice confirming that they have complied with the duty of disclosure.

It is very important that you obtain information from the Court about your duty of disclosure and about what needs to be included in the written notice. There is a separate brochure available from the Registry or on the website.

If both parties have failed to file their documents by the pre-trial conference the case may be sent to the Duty Judge for further procedural orders. This means there could be a delay in achieving a final outcome. The Duty Judge may dismiss all of the applications.

If one party has filed all of their affidavits and the other party has not, the Registrar conducting the pre-trial conference, will usually refer the matter to the Duty Judge. The Duty Judge may make orders striking out the defaulting party's application and give the other party permission to proceed with the case as if it is not being defended. Therefore, it is very important that you file all of your affidavits on time.

Affidavits

During court proceedings, procedural orders will be made to prepare, file and exchange affidavits within specified times. There is an information sheet on affidavits available from the Registry.

Your affidavit is a formal written statement setting out the facts of your case - your evidence. The following points are important:

- Unless you have permission (also referred to as 'leave') from the Court, you are only allowed to file one affidavit of your evidence for the proceedings.

Therefore, you need to ensure all your evidence is in that affidavit. Once both parties have filed their affidavits, you can only file another affidavit in response if you have permission from the Court.

- You must file only one separate affidavit for each witness who is to give evidence on your behalf.
- **Note:** A person under 18 years of age is not allowed to give evidence orally or by affidavit without permission from the Court.
- Affidavits must only contain factual information about which the writer has personal knowledge. **They must not contain your opinion about a fact, or a fact that some other person has told you.** If another person has personal knowledge of a fact that is important to your case, they should provide a separate affidavit.
- Only facts relevant to your case should be in your affidavit and the affidavits of your witnesses. What is relevant to the issues in dispute will be discussed during the various court proceedings. (see also ***The relevant law for property settlement***).
- Your affidavit and the affidavits of your witnesses 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, lawyer or Notary Public.
- Oral evidence (when an affidavit containing the evidence has not been filed) is only allowed with the Judicial Officer's permission, or if you have filed and served a notice stating that the witness refused to sign an affidavit. You may have to subpoena a witness to ensure that they attend the trial (see: ***Getting witnesses to attend at trial***).
- The Judicial Officer may order that any part of an affidavit that is irrelevant, or otherwise improper, be struck out. This means that the affidavit is treated as if the improper parts of it do not exist. If you think words should be struck out of any affidavit, you need to state your objection **at least 14 days before the trial.**

Disclosure

You (and each party) have a duty to the Court and each other party to give full and frank disclosure of all information relevant to your case, in a timely matter.

Parts 13.1, 13.2 and 13.3 of the *Family Law Rules 2004* set out what must be done in order to comply with the duty.

There may be serious consequences if you fail to comply with the duty of disclosure.

4. The relevant law for property settlement

A property settlement case is where the Court divides the property of the parties. In determining a property settlement application the Judicial Officer must 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.

Step 1 – Identifying and valuing the property

The Judicial Officer needs to identify and value the property and financial resources held by you and the other party and deduct from these your respective legitimate liabilities, such as debts or loans.

You are required to file a Financial Statement.

Property can include real estate, furniture, cars, boats, money, businesses, and shares. Superannuation is treated as property only if you were married to the other party.

Note: If you were married to the other party, superannuation may be divided by Court order and therefore, the Judicial Officer must assess contributions to superannuation. However, **if you were in a de facto relationship**, superannuation must be taken into account as a financial resource under step 3. There is a Superannuation Information Kit available from the Registry.

Financial resources are not property; they are generally money that you may or may not receive in the future. For example, money that you might get from a trust, or damages that you might receive in another court case.

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 whether it is in Australia or overseas.

The Judicial Officer must be informed of the value of the property at the time of the trial. If you and the other party cannot agree about the value of an item of property, a qualified valuer should value it (see: ***Professional/ Expert Witnesses***). The valuer needs to provide an affidavit attaching their valuation report, which must be filed and served **at least 21 days before the pre-trial conference.**

Step 2 - Contributions

Once the Judicial Officer has identified the property and financial resources, they must consider the contributions made by each party. The Judicial Officer will consider the following types of contributions:

- Direct and indirect financial contributions such as wages, gifts and inheritance;
- Non-financial contributions such as renovations to a property, gardening or working in the family business; and
- Contributions to the welfare of the family. This includes contributions as a homemaker and parent.

(Family Law Act s 79(4) / Family Court Act s 205ZG(4) see ***Appendix A*** - paragraphs (a), (b) and (c).)

No type of contribution is necessarily more important than another. The Judicial Officer will need to know about:

a) The property and liabilities that each party brought into the relationship;

b) The different types of contributions during the relationship; and

c) Each party's contributions since separation.

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

Step 3 - Further adjustment

Having decided the percentage division of the property based on contributions alone, the Judicial Officer will then consider whether some adjustment should be made. The Judicial Officer must consider various other matters set out in the legislation such as the effect of any proposed order on the earning capacity of the parties, the factors to be considered in an application for maintenance (see spousal maintenance below), and whether a party is liable to pay child support for a child of the relationship. (see: ***Appendix A*** paragraphs (d), (e), (f) and (g).) They will then decide whether one party is disadvantaged, relative to the other party.

If you want the Judicial Officer to make an adjustment because of any of these factors, you must provide relevant evidence in your affidavit.

Spousal maintenance

If you or the other party cannot meet your own reasonable expenses from personal income or assets, there may be an obligation on one party to assist the other financially after separation. For example, a person may be unable to support him or herself adequately because:

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

The Judicial Officer must take into account the *Family Law Act s 72/75(2)/ Family Court Act* s *205 ZC / 205ZD(3)* factors (see: ***Appendix B***). You should provide affidavit evidence about the particular factors that are relevant to your case.

5. Preparation for trial

YOUR PREPARATION SHOULD BEGIN LONG BEFORE THE PRE-TRIAL CONFERENCE

What orders do I want the Court to make?

It is important that you, the other side and the Judicial Officer all clearly understand the orders that you want the Court to make.

You may still want the Court to make the orders sought in your application or response. However, you may now want different orders because you have agreed some issues or some issues have changed.

If, after the pre-trial conference, you want to change the orders you are seeking from the Court, you can ask permission to file an amended application or response.

Whether your amendment is allowed is up to the Judicial Officer. If the other party has no objection to you changing your orders sought, the Judicial Officer will generally allow your amendment. Your chances of having the amendment allowed are better if you give 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.

Notice in relation to affidavit evidence

At least 14 days before the trial date, you must notify the other party, in writing of:

- Any objections to an affidavit filed by the other party;
- Any documents you want to provide to the Court in support of the evidence in your trial affidavit; and
- Where and when any documents that you have, and that the other party has not inspected, can be inspected.

If you receive a notice containing any of the above you must reply in writing, **at least 3 days before the trial.** You should state which parts of the notice you agree with, and if you don't agree, you must explain why.

Getting witnesses to attend at trial

Subpoena

If a person can tell the Court facts or provide documents to the Court that will help your case, but they refuse to come to the trial or provide the documents, you can ask the Court to issue a subpoena **(Form 14**). A subpoena can require a person to:

- Give evidence;
- Bring documents; or
- Bring documents and give evidence.

The Court will not issue a subpoena unless you have first obtained permission from the Court. A request for permission to issue a subpoena must be in writing, addressed to the Principal Registrar. If you need to subpoena a person to attend the trial, you should seek permission as soon as the trial date has been set. Your written request should contain information that may assist the Court in determining whether to grant permission for the subpoena to be issued, including:

- 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 or entity that you want to subpoena has consented to the subpoena being issued.

If the Court gives permission and issues the subpoena it must be served immediately on the person you wish to subpoena. Registry staff can tell you how to do this.

You have to provide the subpoenaed person with conduct money to enable them to attend Court. You may also have to pay the expenses of the person attending the trial or the cost of collecting the documents requested and bringing them to Court.

Notice of intention to cross-examine

If you want to question any of the other party's witnesses at trial, you should inform the Registrar at the pre-trial conference.

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 witnesses included in the notice of intention to cross-examine are at the trial. If the required witness does not come to the trial, the Court may refuse to consider that witness's affidavit, limit the use of the affidavit or adjourn the proceedings.

Professional/ Expert Witnesses

Appropriately qualified professional witnesses (such as property and business valuers) may provide independent evidence to help the Judicial Officer decide a substantial 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, it is recommended that you and the other party agree to jointly instruct a single expert witness to prepare a report for the Court. The parties are equally responsible for payment of the single expert witness's fee.

You may have other professional witnesses, who are not classed as expert witnesses, to support your case.

Professional witnesses may require you and/or the other party to pay their expenses for their time at Court. At the beginning of the trial, you may ask the Judicial Officer if any professional witnesses you want to give evidence can come to Court on a specific day and time to limit their waiting time at Court and, therefore, your expenses.

What will the Judicial Officer want to know at trial?

The information that the Judicial Officer needs to know must be 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 order if you have been divorced;
- The date of birth of each party;
- The name(s) and date(s) of birth of any child(ren) who lived with you and the other party during the relationship; and
- A brief employment history.

6. Papers for the Judicial Officer

You and the other party must file and serve documents known as 'Papers for the Judicial Officer' **at least 14 days before trial.** This is subject to any procedural orders to the contrary. There is a brochure available from the Registry or on the website called 'Papers for the Judicial Officer' with examples of the documents you should file.

In property matters, Papers for the Judicial Officer consist of:

a) A table setting out the assets, liabilities and resources, together with their value, you each hold at the date of your trial. If the value of an asset has changed significantly since the date of separation, the table should also note the value of that asset at the date of separation. This summary assists the Judicial Officer when considering Step 1 (see ***The relevant law for property settlement.***)

b) A short statement, in point form, of what you say are the contributions made by each of you, during the relationship and since separation, under sections 79(4) (a), (b) and (c) (if you were married) or sections 205ZG(4) (a), (b) and (c) (if you were in a de facto relationship) (see: ***Appendix A***).

c) After setting out the contributions, you should state the division of the property you think is appropriate, taking into account those contributions.

This should be expressed as a percentage of the net value of the property. For example, "I think 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 think my contribution was 55%". This assists the Judicial Officer when considering Step 2. (see ***The relevant law for property settlement***).

d) A short statement, in point form of the section 75(2) factors (if you were married) or the section 205ZD (3) factors (if you were in a de facto relationship) that you say should be taken into account (see: ***Appendix B***).

e) A short statement, in point form of the matters in section 79(4) (d) (f) and (g) (if you were married) and/or section 205ZG(4) (d) (f) and (g) (if you were in a de facto relationship) (see: ***Appendix A***) that you say should be taken into account.

f) If you think the factors outlined in either d) or e) above justify a further adjustment to the way the property is to be divided under **Step 2**, you must state what you think that adjustment should be. The adjustment should be expressed as a percentage. For example, "I should receive an extra 5% of the net assets because I will be caring for the children full-time for at least another x years and, therefore, I will not be earning an independent income." This assists the Judicial Officer when considering Step 3. (see ***The relevant law for property settlement***).

g) A short statement summarising the issues that you want the Judicial Officer to decide, and the issues that have been agreed, including issues relating to:

- Contributions;
- Valuation of the assets;
- Existence and/ or extent of liabilities;
- Whether assets are property or a financial resource;
- The assets you should each receive; and
- Whether or not all the assets have been disclosed.

Additionally, in all matters you need to include:

1. A Chronology of relevant events (if one has not already been filed, or an updated one);

2. A list of affidavits you intend to rely on; and

3. A list of authorities (cases already decided) you intend to rely on.

The Papers for the Judicial Officer do not need a cover sheet but should be clearly marked with your name, the other party's name, the Court file number and the date of your trial.

7. What happens during the trial?

What follows is an explanation of what generally happens during the trial. The Judicial Officer will direct the conduct of the trial. If at any stage during your trial you are confused or unsure how to proceed, 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.

1. Applicant makes opening address (when the Judicial Officer permits).
2. Applicant calls first witness (usually the applicant himself or herself).
3. First witness gives evidence.
4. Respondent may cross-examine that witness.
5. Applicant may re-examine that witness (only in respect of matters arising out of cross-examination).
6. Applicant calls next witness.
7. Repeat steps three to six until applicant has called all witnesses.
8. Respondent makes opening address (when the Judicial Officer permits).
9. Respondent calls first witness (usually the respondent himself or herself).
10. First witness gives evidence.
11. Applicant may cross-examine that witness.
12. Respondent may re-examine that witness (only in respect of matters arising out of cross-examination).
13. Respondent calls next witness.
14. Repeat steps 10 to 13 until respondent has called all witnesses.
15. Respondent makes closing address.
16. Applicant makes closing address.

Opening address

At the beginning of your turn in Court you may be invited by the Judicial Officer to 'open' or 'make your opening address'. Although you do not have to make an opening address, you should remember that you will be making your first impression on the Judicial Officer. It would be a good idea to prepare your opening address.

You should briefly outline the issue(s) in your case, for example, whether the value of certain assets or one party's contribution is in dispute, and refer to the orders that you want. You should then indicate briefly the significant matters that you intend to establish in presenting your case and the evidence upon which you will be relying.

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 means that the witnesses cannot discuss the case until they have given their evidence.

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 with you everything you may need, including your affidavit, paper and a pen. The Judicial Officer's Associate will lead you through the oath or affirmation. Then the Judicial Officer will help you begin your evidence. You will have a chance to correct any errors or omissions in your affidavit.

If you want to respond to matters raised in the affidavits of the other party, you may ask the Judicial Officer for permission to give evidence in reply before you are cross-examined by the other party.

Calling witnesses and their evidence

To call a witness, state clearly that you call that witness. For example, "I call John Citizen". The Court Officer will then go outside the courtroom and call out that name. The Court Officer will show the witness to the witness stand.

All the evidence from your witnesses should be in their affidavits. Therefore, you simply have to ask them their name and occupation, then ask them to confirm that the content of 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; or
- You want your witness to give evidence about matters raised in the affidavits of the other party's witnesses.
- The witness refused to give an affidavit.

How do I cross-examine a witness?

When cross-examining a witness, you must only ask questions. You should plan your cross-examination, both before the trial and during the witness's evidence. Your aim is to show the Court that the witness's evidence should not be accepted because they are mistaken, inaccurate, untruthful, or cannot authoritatively say the things they have said. Your case is strongest if you can get the witness to admit to being mistaken or untruthful or can lead the Judicial Officer to conclude that the witness's evidence is unreliable.

If you allege something different from a witness, it is essential that you put your version of events to the witness. For example, you could say, "My evidence is that I made all of the payments for the motor vehicle. This is true isn't it?" If you do not dispute a witness's evidence, do not cross-examine them. If you do not challenge a point that a witness has made, it is open for the Judicial Officer to conclude that you do not dispute it.

In cross-examination you can present to the witness any document that contradicts their evidence. For example, you may have pay slips that show that you earned more than the witness says.

Your cross-examination is not limited to the evidence given by the witness, but any questions should be relevant to the matters in dispute, to the considerations that the Judicial Officer must take into account, or to the witness's credibility.

While your witnesses are being cross-examined, you should make notes for any re-examination.

If the trial is adjourned for any reason while a witness of yours is being cross-examined, you may not discuss their evidence with them at all. It is therefore safest to avoid talking to the witness in an adjournment during cross-examination.

How do I re-examine a witness?

Once the cross-examination is finished, the Judicial Officer will ask whether you want to re-examine the witness. Re-examination relates to matters that came up in cross-examination and is an opportunity to clarify evidence, correct obvious errors or give the witness a chance to give a full answer where they may have been cut off.

Closing address

Once you and the other party have presented the evidence, you will each have an opportunity to make a closing address. If there is important disputed evidence, you should tell the Judicial Officer why he or she should accept the evidence of your witnesses as opposed to the witnesses of the other party. You should outline the findings of fact that you want the Court to make and you should tell the Judicial Officer why he or she should make the orders that you want.

It would be useful to have the legislation in the Appendices to this guide handy (together with any cases decided on similar issues that support your case) and address each of the sections and the cases which you think are relevant. The Judicial Officer is aware, as you are not a lawyer, that you may not be able to point to the relevant cases, but you should be familiar with the relevant sections of the *Family Law Act 1975* or *Family Court Act 1997* (see: ***Appendices A*** and ***B***).

8. When is judgment given?

The Judicial Officer may give judgment and make orders at the end of the applicant's closing address. This may be after a short adjournment to give the Judicial Officer the opportunity to review the evidence or otherwise prepare the judgment. If the judgment is given in this way, you may request a written copy of the Reasons for Judgment which will be sent to you after the Judicial Officer has had an opportunity to edit them.

The Judicial Officer may reserve his or her decision to a specific date and time. Alternatively, the decision may be reserved without a specified date or time for judgment. The Court will contact you to let you know the date on which judgment will be delivered.

When the judgment is delivered, you should be present in Court as the Judicial Officer may want your input about the details of orders to be made.

9. Where do I go for advice?

Family Relationship Advice Line

If you have general questions in relation to family issues you can phone the Family Relationship Advice Line from 8am until 8pm Monday to Friday and 10am until 4pm on Saturdays on 1800 050 321.

Telephone: 1800 050 321
Internet: www.familyrelationships.gov.au/

Family Lawyers

If you are looking for a lawyer who specialises in family law, contact the Family Law Practitioners Association of WA

Internet:
www.flpawa.asn.au/accredited_specialists, or

the Law Society of Western Australia
Telephone: (08) 9322 4911

Legal Aid Western Australia

55 St Georges Terrace, Perth

You may be eligible for representation and you can obtain limited advice over the phone.

Telephone: 1300 650 579 (toll free) or
Internet: www.legalaid.wa.gov.au.

Community Legal Centres

Community Legal Centres provide legal advice and offer assistance to people with low incomes. The Community Legal Centres Association (WA) can refer you to the community legal centre closest to you.

Telephone: (08) 9221 9322 or
Internet: www.naclc.org.au/

10. Legal information on the Internet

To access legal information over the Internet you might try the following websites:

Family Court of Western Australia

You can download Court forms and information kits 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.

Internet: www.familycourt.wa.gov.au/

Family Court of Australia

This site provides some useful legal information, tips for legal research and links to other online legal resources. However, when using this site it is important to remember that there are some differences between the Family Court of Australia and the Family Court of Western Australia.

Internet: www.familycourt.gov.au/

Australian Law Online

This site is provided by the Commonwealth Attorney General's Department and gives you access to legal information and referral services.

Internet: www.law.gov.au/

Legal Aid Western Australia

Internet: www.legalaid.wa.gov.au/

Australasian Legal Information Institute (AustLII)

This site provides access to cases and legislation

Internet: www.austlii.edu.au

Appendix A Contributions

Family Law Act 1975 (married)/ Family Court Act 1997 (de facto). The provisions of both sections are substantially the same except 'party to the marriage' should be read as 'de facto partner' and 'marriage' should be read as 'relationship' where applicable.

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

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 in subsection 75(2) so far as they are relevant; and (spousal maintenance – see ***Appendix B***).

(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 (Spousal maintenance)

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

Section 75(2) / Section 205ZD(3). The provisions of both sections are substantially the same except 'party to the marriage' should be read as 'de facto partner' and 'marriage' should be read as 'relationship' where applicable.

The matters to be so taken into account are:

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

(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;

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

(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;

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

(f) subject to subsection (3) (see below) 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;

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

(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;

(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;

(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;

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

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

(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;

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;

(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.

Note: Section 75(3) FLA / Section 205ZD(4) FCA

In exercising its jurisdiction under section 74, a court shall disregard any entitlement of the party whose maintenance is under consideration to an income tested pension, allowance or benefit.

Appendix C Attendance by electronic communication

For a trial there needs to be an application in a case supported by an affidavit to attend by electronic communication.

It must include the following information, where relevant:

Rule 16.08(3) *Family Law Rules 2004*

(a) what the applicant seeks permission to do by electronic communication;

(b) the kind of electronic communication to be used;

(c) if the party proposes to give evidence, make a submission, or adduce evidence from a witness by electronic communication — the place from which the party proposes to give or adduce the evidence, or make the submission;

(d) the facilities at the place mentioned in paragraph (c) that will enable all eligible persons present in that place to see or hear each eligible person in the place where the court is sitting;

(e) if the applicant seeks to adduce evidence from a witness by electronic communication:

(i) whether an affidavit by the witness has been filed;

(ii) whether the applicant seeks permission for the witness to give oral evidence;

(iii) the relevance of the evidence to the issues;

(iv) whether the witness is an expert witness;

(v) the name, address and occupation of any person who is to be present when the evidence is given;

(vi) if the applicant proposes to refer the witness to a document, whether:

(a) the document has been filed; and

(b) the witness will have a copy of the document; and

(vii) whether an interpreter is required and, if so, what arrangements are to be made;

(f) the expense of using the electronic communication, including any expense to the court, and the applicant's proposals for paying those expenses;

(g) whether the other parties object to the use of electronic communication for the purpose specified in the application and, if so, the reason for the objection.

(h) if the application relates to evidence to be adduced from a witness in a foreign country – the matters required to be addressed under rule 16.09;

(i) if the application relates to evidence to making a submission, giving evidence or adducting evidence from New Zealand – the facilities that enable evidence to be given or a submission to be made, as required by Part 4 of the *Evidence and Procedure (New Zealand) Act 1994*.

Appendix D 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, which are: the *Interpretation Act 1984 (WA)* s 13A, and the *Family Court Act 1997* Part 5A sections 205U, 205X and 205Z or seek legal advice.

A de facto relationship is a relationship (other than a legal marriage) 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, and
- 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.

The Family Court only makes property orders in de facto cases where the parties separated after 1 December 2002. If you separated before then, it is recommended that you seek legal advice about whether you might bring an action in another Court.

For de facto cases, you either must have:

(a) lived in Western Australia for at least one third of the duration of your de facto relationship; or

(b) 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 if either:

- there has been a de facto relationship for at least two years;
- 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 de facto partner made substantial contributions and failure to make the order would result in serious injustice to the partner.

Guide to legal terms

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 put before the Judicial Officer. You should seek legal advice about this if you have any questions.

Affidavit

A formal written statement setting out the facts of your case (your evidence) that you have sworn or affirmed before a Justice of the Peace, Notary Public or experienced lawyer as a true statement.

Applicant

The person who begins the process by filing an application.

Asking Permission

Asking the Court for permission to do something, such as file an affidavit out of time.

Callover

A hearing where a number of cases are allocated trial dates by the List Judge.

Case Assessment Conference

This conference is the first Court event in applications for final orders. The conference is conducted by a Registrar in property / financial cases. The purpose is to provide an early opportunity to clearly identify issues in dispute, to attempt to resolve issues, and to make decisions about the future conduct of the case.

Case Management Guidelines

These are directions issued by the Court about practices and procedures to be followed in all cases.

Chronology

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

Conciliation conference

A meeting which you and the other party attend with a Registrar of the Court in property / financial cases. The aim of the meeting is to attempt to reach agreement about the issues in your case. If you cannot reach an agreement that resolves the case, the Registrar will make procedural orders to ensure your case is ready for trial.

Conciliation Conference Document

This document is used as an aid to settlement in property cases. It is used to set out your proposal for settlement, and the facts on which you base your proposal. If your case proceeds to a pre-trial conference, you must give the other party and the Court an updated version of your conciliation conference document, **at least 7 days before the conference**. The Registrar will return the Court's copy to each party at the end of the conference. This is because settlement negotiations are confidential ('privileged') so proposals for settlement are not kept on the Court file.

Conduct money

When a subpoena is served, the person serving it must provide the subpoenaed person with sufficient money for return travel between that person's residence or employment (whichever is appropriate) and the Court, for example bus or train fares.

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 side provides to the other party a list of documents in their possession, custody or control which are relevant to the case. (see Discoverable documents).

Discoverable documents

Documents that you have in your possession, custody or control that are relevant to your case. 'Possession, custody and control' is a legal term which covers more than documents in your physical possession. If you have questions about this term seek legal advice.

Exemption / Waiver of the fees

If you hold certain Centrelink cards or can show financial hardship you may not have to pay certain fees. You can get the form to apply for an exemption/waiver of the fees at the registry of the Court

Expert Witness

An expert or single 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 Part 15.5 of the *Family Law Rules 2004.*

File

To lodge a document in the registry of the Court and have it accepted for filing by the Court.

Judicial Officer

Either a judge or a magistrate who is listed to hear your case.

Leave of the Court

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

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. You can get this form from the Registry of the Court or the Court's website.

Notice to produce

The other party may have served this notice on you. It requires you to bring certain documents to your trial. You may also serve a notice to produce on the other party.

Party / Parties

A person involved in an application. (Applicant and Respondent). You and the other party are parties to the proceedings.

Pre-trial Conference

When you and the other party meet with a Registrar to outline how the case is proceeding and try to reach an agreement prior to trial. If you do not reach an agreement the Registrar will make procedural orders to prepare the case for trial. A date for the trial will be allocated either at the conference or at a callover by a judge.

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 that 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.

Procedural hearing

The Registrar generally conducts procedural hearings during the case assessment conference in property/ financial cases. The purpose of a procedural hearing is to make orders for the future conduct of the case.

Registry

Located on Level 1, 150 Terrace Road, Perth, the main office of the Court that files Court documents or accepts Court documents for filing.

Respondent

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

Serve

To formally provide documents to the other party. You can ask at the Registry of the Court about serving documents.

Submissions

Arguments presented to the Court to persuade the Court to make the orders you want.

Subpoena

A document issued by the Court that requires a person to come to Court to give evidence and/or bring documents or other things to 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, a Notary Public or an experienced lawyer.

Trial

The final hearing of a matter before a Judicial Officer. Having considered all the evidence presented, the Judicial Officer will make orders to finalise the matter.

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