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AFFIDAVITS IN FAMILY LAW

WHAT IS AN AFFIDAVIT?



An affidavit is a document setting out the evidence of a witness, made under oath.

An affidavit is an account of what the witness saw, heard, did and/or experienced that is relevant to the issue(s) to be decided by a Judge.

An affidavit must be filed in the prescribed form available on the Family Court of Australia and Federal Circuit Court of Australia websites and should be signed by the person swearing or affirming the affidavit on each page and witnessed by a Solicitor, Justice of the Peace or Commissioner for Declarations.

WHAT IS THE PURPOSE OF AN AFFIDAVIT?



Family Law proceedings are by definition, a “trial by affidavit”. Thorough consideration must be given to the drafting of an affidavit because it is the most important document a party relies on. It gives the party the opportunity to spell out or “paint a picture” of their story. In order to paint a proper, clear and persuasive picture, relevant details must be included.

An affidavit is a method of giving evidence. The evidence is usually untested until the matter proceeds to a contested Interim Hearing or a Final Hearing. When a person swears or affirms an affidavit that is filed in family law proceedings, the person who made the affidavit may be cross examined about their evidence. Cross examination ‘tests’ the evidence for reliability.

In Family Law property proceedings, the affidavit should address the following:

- the duration of the relationship or marriage;
- whether there are any children of the relationship or marriage;
- the asset pool available for division;
- the financial and non-financial contributions made during the marriage or relationship;
- the future needs of the parties; and
- how the orders sought are just and equitable. This means you will need to explain to the Court the reasons you are seeking particular Orders.

In Family Law parenting proceedings, the affidavit should address the following:

- S60CC(2) factors, being the two primary considerations – the child’s right to enjoy a meaningful relationship with both of the child’s parents and the need to protect the child from physical or psychological harm from abuse, neglect or family violence; and
- S60CC(3) factors, being the additional considerations including, but not limited to:
 - i) Any views expressed by the child.
 - ii) The nature of the relationship of the child with each parent.
 - iii) The likely effect of any proposed changes in the child’s circumstances.

HOW DO I DRAFT AN AFFIDAVIT?



At every stage of drafting your affidavit, try to place yourself in the position of the reader who has not seen the document before, and does not have a lot of time to read it. An affidavit should be easy for a Judge to read. For this to happen, aim for:

- Short, numbered paragraphs.

- All pages, including any attachments, numbered in appropriate order.
- It can be helpful if an Affidavit is divided into sections under separate headings
- Each statement in an Affidavit should follow on logically from the statement before it. Sometimes it is appropriate to detail facts in chronological order.
- All statements should be relevant. Make sure you remember to put all relevant information important to your case in your affidavit as you may not get the opportunity to let the Court know about it later.

The person signing the affidavit should sign the bottom of each page of the Affidavit in the presence of a qualified witness as well as complete and sign the "jurat" clause at the end of the Affidavit.

Given the importance of "the affidavit" in family law, it is a document that you should devote the necessary time to in preparing. You will have the best possible chance of success if you retain a family law solicitor to not only prepare your affidavit, but act on your behalf throughout the proceedings. Where you do not have the financial means to retain a solicitor, keep the above points in mind when drafting your own material.



GET STARTED

anywhere,
any time with
our online
questionnaire

- ◆ DIVORCE & SEPARATION
- ◆ PROPERTY SETTLEMENT
- ◆ CHILDREN & PARENTING
- ◆ RELATIONSHIP AGREEMENTS
- ◆ DOMESTIC VIOLENCE
- ◆ WILLS & ESTATES

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