

Guide to Financial Disclosure

Spouses/civil partners who are separating have a duty to provide full, frank and clear financial disclosure to one another and the court in financial negotiations and court proceedings.



There are strict laws relating to confidential material, in particular, the implications of unlawfully obtaining confidential material and the criminal and civil sanctions that can be imposed for doing so.

Obligation to provide full and frank financial disclosure

Both spouses/civil partners must give full, frank and clear disclosure of their respective financial positions in all negotiations and/or proceedings leading to the court making a financial order. This is a continuing obligation, up to the date when the court finally concludes the case.

Disclosure is usefully given in a specific form prescribed by court rules called a Form E. Documents, such as 12 months' bank statements, company accounts and pay slips, must be attached to the form. You can also make specific requests for further information and documents in a questionnaire which is prepared once the spouses/civil partners have completed and exchanged Forms E.

In court proceedings, the court considers requests for additional documents at the First Appointment and directs what further information and documents, if any, need to be produced.

If spouses/civil partners are attempting to resolve financial matters using non-court dispute resolution they can either use the standard Form E, or in certain circumstances they may agree to disclose a summary of financial information. If spouses/civil partners reach an amicable agreement outside of court proceedings then when that is submitted to the court for approval a statement in support called a Form D81 which summarises the financial situation must be lodged.

What is the court's view on "self-help"?

In the past, if a spouse/civil partner did not expect the other spouse/civil partner to give full, frank and clear financial disclosure, they would help themselves to documents belonging to their spouse or civil partner before financial disclosure was given, and then return the documents to their owner. This practice became known as the Hildebrand rules because, in that case, the court gave guidance about the treatment of disclosure obtained surreptitiously.

The Hildebrand case led to parties clandestinely obtaining information and documents belonging to their spouse or civil partner for use in impending court proceedings.

In the case of *Tchenguz and others v Imerman*, the court clarified that the Hildebrand rules do not condone the removal and retention of confidential material belonging to another party. The Hildebrand rules merely set a precedent about when unlawfully obtained documents must be disclosed to their owner.



The requirement on both parties is to provide the court and one another with full, frank and clear financial disclosure. A failure to provide full, frank and clear financial disclosure can hinder a fair trial. Therefore, confidential material, whether or not obtained unlawfully, can be produced in court proceedings, providing that they are relevant and not privileged. However, by doing so, a person who has unlawfully obtained disclosure, risks the imposition of civil or criminal sanctions (or both).

Privileged and confidential documents

There are several types of confidential documents and different rules apply to each type, as follows:

- **Privileged documents.** These are documents passing between a person and their lawyer. Their content is privileged. Privileged documents can be withheld from production to the court or a third party (or both). Frequently, they contain legal advice or are created for pending court proceedings. You must not look at privileged documents not belonging to you or pass them to a third party, except for your lawyer in the manner described below. You must return them, unread, to their owner as soon as possible.
- **Confidential documents.** These are any documents relating to a person's personal matters that others are not entitled to see. They can include financial papers that are relevant to financial negotiations or court proceedings and that should be disclosed according to the duty to give full, frank and clear financial disclosure. If you have any of these documents, you must return them, unread, to your spouse/civil partner, subject to the need to be preserved for use as evidence. Legal means of preservation should be used. Confidential documents also include documents that have no relevance to financial negotiations or court proceedings, such as a diary or personal letters. You may not take, copy or read any material belonging to your spouse/civil partner. If you have any of these documents, you must return them, unread, to your spouse/civil partner.

If you are concerned that your spouse/civil partner may have unlawfully obtained confidential material belonging to you, please let your lawyer know immediately. Your lawyer will contact your spouse/civil partner or their lawyer if they have one to formally request that they are returned.

If you have any privileged materials belonging to your spouse/civil partner in your possession, please send them to your lawyer in a sealed envelope, marked "Privileged material belonging to [insert name of your spouse/civil partner]."



If you have any confidential material in your possession, please send them to your lawyer, again in a sealed envelope, marked "Confidential material belonging to [insert name of your spouse/civil partner]". You will need to provide written instructions about the nature of the papers, and how and when the material came into your possession.

Please note, however, that any information that you have about your spouse/civil partner's financial position is helpful and can be the basis of a line of enquiry, even though the documents themselves must be returned. Knowledge once acquired, cannot be lost.

Depending on the nature of the confidential material, it may be appropriate for your lawyer to:

- Return them, unread to your spouse/civil partner / their lawyer, if they are not relevant to financial negotiations or court proceedings.
- Hold the documents securely, sealed and unread pending agreement with your spouse/civil partner / their lawyer about how they should be dealt with, or an order of the court.
- Deliver them to your spouse/civil partner / their lawyer, subject to an undertaking for them to retain a complete set securely in the form in which they were received, and hold these pending agreement or further order of the court and review their contents for relevant and discoverable material in accordance with the duty on advisors and parties about full and frank financial disclosure.

Civil and criminal implications of accessing unlawfully obtained disclosure

Unlawfully obtaining disclosure can amount to a civil wrong, such as trespass or breach of confidence. It can also lead to committing a criminal offence and to the imposition of criminal sanctions on the wrongdoer under the following legislation:

- Computer Misuse Act 1990 for the unauthorised access to material stored on a computer.
- Data Protection Act 1998 for obtaining or disclosing personal data or information, or procuring the disclosure to another of information contained in personal data without the consent of the data controller.
- Theft Act 1968 for taking property belonging to another person. A person can also commit burglary by entering a building as a trespasser and stealing, or attempting to steal, anything in the building.
- Criminal Damage Act 1971 for destroying or damaging property belonging to another person, for example, by breaking into premises to access confidential material.

Legitimate ways to obtain disclosure

If you are concerned about your spouse/civil partner failing to give full and frank financial disclosure, the following are legitimate ways to obtain disclosure:



- Court processes, for example, by requesting disclosure in a questionnaire.
- Obtaining an order from the court such as:
 - a search order allowing for the search and seizure of documents without prior notice;
 - an order to require a third party, such as an accountant or a bank, to disclose information;
 - an order to freeze a person's assets.
- If you are a company director or shareholder, by attending the annual general meeting. (Directors and shareholders are also entitled to copies of company accounts).
- Making enquiries at Companies House if the disclosure relates to a limited company.
- Searches at the Land Registry for property.
- Looking at the franking mark on the outside of envelopes to see which companies are writing to your spouse/civil partner.
- Looking at your spouse/civil partner's financial papers and other documents that are open and freely accessible and making a note of what you see.
- If you are a joint signatory on a bank account or financial investment, you are entitled to statements of account from the administrator.
- If you are a beneficiary of a trust, you can ask the trustees to produce copies of the trust accounts.

What you must not do

There are various things that you must not do to obtain disclosure, such as:

- Steal documents (even those in rubbish bins).
- Interfere with post.
- Break into premises to access information or documents.
- Break into a locked cupboard, filing cabinet or briefcase to gain access to information or documents.
- Make surreptitious copies of confidential materials.
- Fax or email copies of documents to yourself or a third party.
- Download or copy financial information from your spouse/civil partner's computer.
- Give copies of documents that have wrongly come into your possession to any third party, including your lawyer, unless they are in a sealed envelope.

Top Tips

Do not give your lawyer any documents about which you may have concerns. Inform your lawyer first and tell them how the documents came into your possession. If your lawyer sees documents that they should not have seen, they may commit a criminal offence and be unable to act for you.



You must keep your own financial documents and papers that may be relevant to financial negotiations and court proceedings. You must not destroy them.

You may want to ensure that your papers are kept confidentially and not left where they can be accessed by others. In particular, you may want to keep any documents containing legal advice securely.

Consider locking and password protecting any computers or mobile devices (if you have not done so already) and changing your passwords frequently.

Set up a new email account to send and receive emails to/from your lawyer.

Contact details

If you would like to discuss issues arising in this factsheet or if there is some other legal issue we can help you with then please contact a member of the team on 01273 646900 or by email: info@familylawpartners.co.uk