



LEGAL AID
WESTERN AUSTRALIA

PROPERTY INJUNCTIONS KIT



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This publication contains general information only and is intended as a general guide about the law.

You should not rely on this information as legal advice. We recommend that you talk to a lawyer about your situation if you need advice.

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Who is this kit for?

The Property Injunctions Kit is for people who have separated and need urgent help to stop their ex-partner selling or transferring an asset without their consent.

A person can apply for an injunction to stop their ex-partner from doing something that would negatively affect the person's right to a property settlement. The court has the power to grant injunctions that stop a person:

- selling or transferring ownership of a property,
- spending money from the sale of property,
- re-mortgaging or refinancing against a property,
- moving an asset out of Australia, and more.

It is important to get specific legal advice about your situation if you are considering applying for a property injunction. A lawyer will explain your rights and responsibilities and advise you on whether a property injunction is the right step for you. See the Family Court of WA's [Legal Advice](#) page and Legal Aid WA's [Get Legal Help](#) page.

Key words and legal terms

- **Applicant:** the person who is asking the court to make the order.
- **Court:** refers to the Family Court of Western Australia which has the power to make decisions about property settlement for married and de facto couples.
- **Ex parte application:** an urgent application to the court without giving notice to the other party due to risks associated with them finding out about proceedings before orders are made.
- **Filing documents:** uploading your signed and completed documents on the eCourts portal so they are received by the court.
- **Injunction:** a court order that compels a party to either do something or stop doing something. Injunctions are used to prevent harm, enforce legal rights and maintain the status quo during legal proceedings.
- **Interim order:** a court order made in the middle of proceedings; not a final court order.
- **Property:** also referred to as an 'asset' - includes real estate, money in bank accounts, shares, cash, cryptocurrency and digital assets, superannuation, companies, trusts, partnerships, personal effects and furniture.

- **Property settlement:** the act of reaching agreement on how to divide property after separation, or the act of asking a court to make a decision about how property should be divided after separation.
- **Respondent:** the person who is served with the application and who must respond.
- **Service of court documents:** providing a copy of your court documents to a nominated server, who gives the documents to the other party by way of “service”.

When can I apply for an urgent property injunction?

You can apply for an urgent property injunction if:

- you were married or were in a de facto relationship and have separated;
- you and your ex-partner own property together or separately, and need to decide how to divide this property;
- before you can decide how to divide your property, you are worried your ex-partner might sell or get rid of this property for reasons such as:
 - your ex-partner owns real estate in their sole name, and you have seen a “for sale” listing for the property online or a sale board in front of the house;
 - you have seen your ex-partner or a real estate agent preparing the house for sale, including holding home inspections for potential buyers;
 - you have seen documents relating to the potential sale or transfer;
 - you have heard through third parties that your ex-partner is going to sell the house;
 - you have directly asked your ex-partner about the potential sale and they have confirmed it or not denied it;
 - you have seen a “for sale” listing on one of the assets in your ex-partner’s name or have good reason to believe they are about to sell or transfer ownership of the asset – for example, an expensive boat or vehicle;
 - your ex-partner has withdrawn a large sum of money from a bank account or their superannuation fund without your consent and you are worried they may continue to withdraw money;
 - your ex-partner has transferred, sold or otherwise hidden cryptocurrency or digital assets without your consent and you are worried they may continue to dispose of cryptocurrency;

- you have tried to negotiate with your ex-partner about not selling or transferring this asset and have not been successful, or there is not enough time to negotiate with your ex-partner as the sale of the asset is about to happen very soon.

Are there time limits to apply?

If you were married, and you have been divorced, you need to file for property settlement (including any application for an injunction) within 1 year of the date of divorce.

If you were married and are not divorced, there are no time limits.

If you were in a de facto relationship, you need to file for property settlement (including any application for an injunction) within 2 years of the date of separation.

In rare cases, the court may allow you to start a property case if you are outside the above time limits, if you can show that you or your child would suffer hardship. It is important to get specific legal advice about this situation.

What are my other options?

You can advise the bank of your separation and request that funds in joint accounts be made 'joint signatures to withdraw'. This prevents either party from transferring the remaining funds without the other person's consent.

You can seek legal advice on whether you can register a caveat on a house that is solely owned by your ex-partner, if you have a legitimate legal interest to do so. A caveat is an instrument lodged with Landgate and reflected in the certificate of title, that prevents certain dealings in the property. The fact that you are separated and going through property settlement alone does not give you a right to a caveat. There are serious penalties for registering a caveat when you are not entitled to do so.

What approach does the court take?

The court has a wide discretion of power when making orders and injunctions. It is a requirement by law that any order the court makes must be just and equitable.

Injunctions are only made in serious cases and are not granted by the court lightly. The court decides whether to grant injunctions depending on the merit of each case.

For the court to grant an injunction restraining your ex-partner from dealing with their property, it must be satisfied about the following factors:

- you need to be eligible for property settlement and likely to receive something in your property settlement;
- there needs to be a real danger that your claim for property settlement may be defeated or prejudiced unless the injunction is granted; and

- the balance of convenience should favour granting you the injunction, that is, the damage to you in losing your property settlement entitlement must outweigh the potential damage to your ex-partner if they are not allowed to dispose of an asset.

In exercising its discretion, the court should:

- not restrain a person from ordinary business dealings or from using funds for ordinary living expenses;
- impose only the minimum restrictions that are necessary to protect your claim for property division;
- go no further than necessary to prevent abuse or frustration of the court's process;
- take into account whether there is any intention to dispose of assets.

Factors for de facto couples

There are additional factors a de facto party will need to meet when applying for property injunctions and property settlement in general:

- there needs to be a connection to Western Australia (WA), being:
 - either you or your ex-partner must reside in WA on the day the application to court is made; and
 - you must both have resided in WA for at least one third of the duration of your relationship OR that you must have made a 'substantial contribution' to the property of the relationship in WA;
- the parties must meet the following requirements, namely that:
 - they lived in a de facto relationship for at least 2 years, or
 - if they lived in a de facto relationship for less than 2 years:
 - there is a child of the de facto relationship and failure to make orders would result in serious injustice to the party caring for the child, or
 - the applicant made a 'substantial contribution' to the relationship and a failure to make the order would result in serious injustice to them.

These factors should be addressed in any affidavit in support of an application made to the court.

What if third parties are affected by injunctions?

Injunctions may affect the rights of third parties. For example, a person may be restrained from selling a home even where that home is owned jointly with another person (who is not the applicant).

When considering making an injunction that affects a third party the court must:

- ensure the injunction is reasonably necessary, or reasonably appropriate;
- consider whether and to what extent the proposed injunction will affect the rights of the third party;
- give procedural fairness to the third party before making the injunction, that is, they must be served with the application and have a chance to respond and appear in court;
- consider the taxation and social security effect (if any) of the injunction on the parties to the relationship and the third party.

Third parties can include a person, a bankruptcy trustee, a company, a bank, a superannuation fund, or the Australian Taxation Office.

Step 1: before filing an application

If you would like to start a property settlement case you must first make a genuine effort to resolve the dispute. This includes exchanging full and frank disclosure, negotiating by making offers and counteroffers of settlement (preferably in writing), and attempting family dispute resolution (“FDR”) with your ex-partner. These steps are known as ‘pre-action procedures’.

Note: If you have concerns about family violence and fears for your safety if you have to negotiate with the other party, you may be exempt from ‘pre-action procedures’ and may make a direct application to court. You will still be required to provide your financial disclosure documents during proceedings.

Writing a negotiation letter

Where there is a concern about your ex-partner selling or transferring property solely owned by them but it doesn’t appear the sale is happening soon, it may be best to write a negotiation letter to your ex-partner first and attempt to resolve the problem. Be aware that writing to your ex-partner and giving them notice may cause them to act with haste and act on the sale or transfer sooner – consider how your ex-partner may react to receiving a negotiation letter.

The negotiation letter should state:

- the reasons why you believe the property will be sold without your consent;

- that you do not consent to the property being sold;
- you seek an informal undertaking that they will not sell the property without an agreement in writing between the parties (an informal undertaking is simply a declaration in writing from the other party which can be used as evidence later on);
- if no response is received within the requested timeframe or there is no agreement, you will file a court application seeking an urgent property injunction without further notice.

The letter should be sent by email and registered post, signed, dated and a copy retained for later court use if necessary.

You can send this letter yourself or you can pay a lawyer to prepare and send it for you.

If you have completed the pre-action procedures and there is no resolution or there is no time for negotiations, the next step is making an application to court.

When to seek *ex parte* orders

There may be circumstances where it is not possible or appropriate to attempt negotiations, such as the property is about to be sold very soon, or already has been sold and the proceeds are about to be distributed to your ex-partner. In those urgent cases you may need to proceed with the application either on an *ex parte* basis or on giving short notice to the respondent.

Ex parte means without the knowledge or participation of the respondent. This type of order is only sought in situations where there is immediate risk of harm or irreparable damage, making it necessary to act quickly. Short notice means serving your documents on the respondent very quickly, for example on the same day you have filed your application.

Some considerations when deciding whether to seek an *ex parte* order as opposed to an order with short notice are:

- Is there an immediate risk of hardship or prejudice to you if the respondent is notified of proceedings?
- What conduct of the respondent supports this risk?
- Is the respondent able to deal with property on their own and without your consent? For example, is the property in their sole name?
- Would giving notice to the respondent effectively defeat the purpose of the injunction?

Step 2: preparing and filing the application

When there are no existing Family Court proceedings

If there are no existing court proceedings you need to file the following documents:

Form 1 Initiating Application

See the Family Court of WA's [Form 1 Initiating Application](#).

The orders sought for a property injunction would be included as part of your 'Interim or procedural orders sought' in the Form 1 Initiating Application. Examples of how to write your orders sought are provided below at [page 13](#).

Affidavit

See the Family Court of WA's [Affidavit – General](#) or [Case Information Affidavit \(PPP500\)](#) if the matter meets the guidelines for a [PPP500 case](#) (that is, if your case involves total net property excluding superannuation of \$500,000, or less, and there are no entities that might require expert investigation such as companies or trusts, and you are not seeking parenting orders). See what to write in your affidavit on [page 15](#).

Financial Statement

See the Family Court of WA's [Form 13 Financial Statement](#) or [Financial Statement \(PPP500\)](#) if the matter meets the guidelines for a [PPP500 case](#).

Undertaking

See the Family Court of WA's [Undertaking as to damages](#) and the example below at [page 19](#).

Cover letter

See the Family Court of WA's [cover letter](#) template. If you are seeking an urgent court listing you will need to prepare and file a cover letter to court, stating which documents you are seeking to file, and brief information in dot points to justify the urgency of the application. See the example below on [page 20](#).

When there are current Family Court proceedings

If there are current court proceedings, you need to file the following documents:

Form 2 Application in a Case

See the Family Court of WA's [Form 2 Application in a Case](#). Examples of how to write your orders sought are provided below at [page 13](#).

Affidavit

See the Family Court of WA's [Affidavit – General](#) and what to write on [page 15](#).

Financial Statement

See the Family Court of WA's [Form 13 Financial Statement](#) if your financial circumstances have changed since you last filed this document.

Undertaking

See the Family Court of WA's [Undertaking as to damages](#) and the example below at [page 19](#).

Certificate of Conferral

See the Family Court of WA's [Certificate of Conferral](#). This form is used when a property case has started, to certify that the parties have conferred (negotiated) on a without prejudice basis to try and resolve the dispute before filing an application. Negotiating on a without prejudice basis means that what either party says in the negotiations cannot be referred to in court if the matter goes to court. 'Without prejudice' is a way of saying that negotiations are private, to allow the parties to explore the possibilities of settlement of the dispute, without having to worry that what is said or discussed will be used against them later on in court.

Cover letter

See the Family Court of WA's [cover letter](#) template. If you are seeking an urgent court listing you will need to prepare and file a cover letter to court, stating which documents you are seeking to file, and brief information in dot points to justify the urgency of the application. See the example below on [page 20](#).

Additional documents

Some other documents you may need are:

- A copy of your marriage certificate, if you were married.
- Your Centrelink CRN number (if you have a Commonwealth Concession Card). You will need this when you are lodging your documents on the eCourts Portal of WA if you are going to ask for a filing fee exemption.
- [Fee Exemption – General](#) or [Fee Exemption- Financial Hardship](#) if you don't have a Commonwealth Concession Card and want to apply for a fee exemption.

Writing your Form 1 or Form 2 application

The below orders are usually sought in the 'interim or procedural orders sought' section of the Form 1 or Form 2. You do not have to use these example orders; you may wish to use alternative phrasing or an example given by your lawyer.

Example interim orders

Restraint on dealing with or encumbering property

1. Until further order, the respondent be restrained by injunction from dealing with, selling, transferring, drawing down or further encumbering the property located at [address] in the State of Western Australia, being more particularly described as [insert certificate of title details] except as may be agreed between the parties in writing or as ordered by this court.
2. Until further order, the respondent be restrained by injunction from dealing with the funds held in the following bank accounts:
 - a. [Name of bank], [BSB and account number];
 - b. [Any bank account where the funds from the sale of the property located at [address] have been deposited].
3. That notwithstanding order 2 above, the respondent be permitted to draw down no more than \$[amount] each [week/fortnight/month] for the respondent's reasonable living expenses.
4. The parties sign all necessary documents directing the [solicitors/conveyancers] acting for the respondent in the sale of their home at [address] to retain any net sale proceeds, after payment of mortgage, rates and legal expenses in the trust account of [name of solicitors/conveyancers], pending final property settlement orders.

Restraint on dealing with asset such as vehicle or antiques

1. The Respondent be restrained by injunction from dealing with, or further encumbering, their interest in [asset] without Applicant's prior written consent.

Restraint on using funds in bank account/credit card

1. Until further order, without the prior written approval of the applicant, the respondent be and is restrained by injunction from:
 - a. withdrawing funds or otherwise dealing with any of the monies held by [name of bank] in the name of [name of account holder] with account number [BSB and account number]; and
 - b. using or otherwise dealing with the [name of bank] [type of credit card e.g. Visa, Mastercard] with number [credit card number].

Restraint on dealing with shares and/or cryptocurrency

1. Until further order, without the prior written approval of the applicant, the respondent be and is restrained from trading, selling or otherwise dealing with on any online platform or exchange [name of shares/cryptocurrency] in their present possession and control.
2. [For cryptocurrency only] Until further order, the respondent is restrained by way of injunction from accessing any electronic device for the purpose of accessing any cryptocurrency app, exchange and/or wallet in his/her name and/or associated with the respondent.

Service

If seeking orders on an *ex parte* basis (keeping in mind the high threshold of risk and urgency required) the interim orders regarding service are:

1. The application be heard on an urgent, *ex parte* basis and the usual requirement for service be dispensed with.
2. Urgent extraction of orders.

Example final orders

If you are filing a Form 1 Initiating Application you also need to state what final orders you are seeking about property division.

If you are unsure what type of orders you want to ask for, you can seek the following final order, “The Applicant have leave to particularise their final orders at a later stage.” The court will then ask you later on in proceedings to file an Amended Form 1 Initiating Application setting out in detail the property settlement orders you are seeking.

Writing your Affidavit

Your Affidavit will need to cover information about:

1. The history of your relationship.
2. Names and dates of birth of any children of the relationship or children from other relationships.
3. For de facto relationships, detail that:
 - a. at least one party resides in WA on the day the application is made; and
 - b. either one of these situations applies:
 - i. you lived in a de facto relationship for at least 2 years; or
 - ii. you lived in a de facto relationship for less than 2 years but:
 1. there is a child of the relationship and failure to make orders would result in serious injustice to the party caring for the child; or
 2. the applicant has made substantial financial, non-financial or homemaker/parent contributions and failing to make orders would result in serious injustice; and
 - c. there is a connection to WA being:
 - i. both parties lived in WA for at least one third of the length of the relationship; or
 - ii. substantial financial, non-financial or homemaker/parent contributions have been made by you or the other party while residing in WA.
4. Details of why you are seeking the property injunction, and the harm that would be caused if the injunction was not granted. If the injunction relates to real property then attach the [Certificate of Title](#) as an annexure.
 - a. For annexures, state at the end of the relevant paragraph “Annexed and marked with the letter “A” is a copy of the Certificate of Title obtained on [date]”.
 - b. Write “A” and subsequent letters on the top right of each annexure page and attach them to the end of the affidavit.
 - c. A maximum of 5 documents can be annexed.
5. Details of why your application is urgent and should be listed on an *ex parte* basis or on short notice to the other party.
6. Your and the other party’s finances at the start of the relationship including:
 - a. employment status and income,
 - b. if either of you owned property and how much it was worth,

- c. if either of you had debts and how much was owed.
7. Your and the other party's finances during the relationship including:
 - a. employment status and income,
 - b. if either of you owned property and how much it was worth,
 - c. if either of you had debts and how much was owed,
 - d. any lump sum received such as inheritances or gifts or payouts.
8. Details of real estate owned by either or both of you during the relationship including:
 - a. the address of property and the purchase price,
 - b. the sale price of the property if sold, and date of sale,
 - c. the amount of net sale proceeds if sold, and how those funds were used,
 - d. mortgage amount when bought and current mortgage amount if still owing,
 - e. whether the property is still owned and if so its value,
 - f. how the mortgage was paid,
 - g. who maintained and/or renovated the property.
9. Your children: Who was the primary carer? How was the children's care usually divided between you?
10. Your and the other party's finances after separation including:
 - a. Who moved out of the former family home?
 - b. Who pays the mortgage and who pays rent?
 - c. What property has been bought and sold since separation?
 - d. Who drives which car?
 - e. Who is responsible for which debt?
11. Details of any family violence experienced by a party including the effect of:
 - a. family violence on a party's ability to make contributions to the relationship,
 - b. family violence on any current or future needs of a party,
 - c. family violence on any spousal maintenance sought by a party,
 - d. any intentional or reckless wastage caused by a party.

12. Your and the other party's current and future needs including:

- a. age, and mental and physical health,
- b. income, property and financial resources of each party,
- c. the need to provide a home for dependent children,
- d. access to government benefits or pension or allowance,
- e. care of children and dependents,
- f. a reasonable standard of living,
- g. new partners and other factors.

13. A table of the known assets and liabilities owned jointly and by each party. You can use this example below:

Description	Owner	Value
ASSETS		
Family home		\$
Other real estate		\$
Motor vehicles		\$
Home contents		\$
Bank accounts		\$
Bank accounts		\$
Bank accounts		\$
Shares/cryptocurrency		\$

Description	Owner	Value
Superannuation		\$
Business		\$
<u>TOTAL ASSETS</u>		\$
LIABILITIES		
Mortgage on family home		\$
Other mortgage		\$
Credit cards		\$
Personal/car loans		\$
Tax debts		\$
Student loans		\$
Other		\$
<u>TOTAL LIABILITIES</u>		\$
<u>NET ASSETS</u>		\$

Writing the Undertaking as to Damages

While not mandatory, it is likely you will be required to file an Undertaking which is a promise to the court with the same force and effect as an order of the court. It is a promise to compensate the other party for any damages caused by the injunction if it is later found the injunction should not have been ordered. If you are not prepared to give an Undertaking this will not prevent the court from granting an injunction, but you should get legal advice about this situation.

The wording of the Undertaking is:

“I undertake:

- (a) to submit to such order (if any) as the Court may consider to be just for the payment of compensation, (to be assessed by the Court or as it may direct), to any person, (whether or not that person is a party), affected by the operation of the order or undertaking or any continuation (with or without variation) of the order or undertaking; and
- (b) to pay the compensation referred to in (a) to the person affected by the operation of the order or undertaking.”

Cover letter to the court seeking urgent listing

Your Name

Your Address

The Principal Registrar

Family Court of Western Australia

150 Terrace Road

PERTH WA 6000

[date]

Dear Registrar,

PARTIES' NAMES

FILE NO:

I am the Applicant in the above proceedings.

The Respondent is [insert name]

I request my Application for property settlement and urgent injunction be listed on an urgent and *ex parte* basis before the duty Magistrate today or as soon as possible. I am seeking an *ex parte* hearing because [explain risk to you if the other party becomes aware of your application].

I am seeking an urgent hearing for the following reasons:

- [briefly outline reasons why you are seeking an urgent listing].

If the matter cannot be listed on an *ex parte* basis I respectfully request it be listed on short notice to the respondent.

I also request that if the matter is to be heard on an *ex parte* basis, this application and any orders granted **not** be published on the eCourts portal, until service on the respondent is ordered.

I request the enclosed application be filed notwithstanding any non-compliance with the rules of the Family Court of Western Australia.

Yours faithfully

Your full name and signature

Enc. Form 1/ Form 2

Affidavit

Financial Statement

Filing your application

Register for an [eCourts Portal](#) online account. See the Family Court of WA's [Using eCourts Portal](#) page for more information about how you can register your account.

Scan each page of your application and supporting documents in PDF format. Save the documents as separate files.

To file a Form 1 Initiating Application on the eCourts Portal, use the following steps:

1. Login to your account.
2. Click on the link to “Family Court of WA” under the Assisted Lodgement tab.
3. Under “Lodge an Application”, click “Financial” and click “no” to the question “Are parties in agreement with the Orders sought?”
4. Click “Yes” to “Are you seeking Interim Orders with the application?”
5. Click through to subsequent steps and attach documents when prompted. Click “Confirm and Lodge” as the last step.

To file a Form 2 Application in a Case on the eCourts Portal, use the following steps:

1. Login to your account.
2. Go to “My Current Matters”, select “Lodge” on the right-hand side.
3. Under “Please select the type of document” type “Form 2 Application in a Case – Parenting and/or Financial”. Select “Assisted Lodgement” then click next.
4. Click through to subsequent steps and attach documents when prompted. Click “Confirm and Lodge” as the last step.

You will need to pay the applicable [filing fee](#) at the time of filing your application. Have your credit or debit card details ready, or your Centrelink CRN if filing a Fee Exemption – General, or the Fee Exemption – Financial Hardship form.

Step 3: Serving the application on the respondent

How service should be conducted will depend on whether you are seeking orders on an *ex parte* basis or not. After filing on the eCourts portal, you will receive an emailed letter (via eCourts) from the Duty Registrar with the listing date and time, and requirements for service (that is, either no requirement if *ex parte*, or service on short notice).

If seeking orders on an *ex parte* basis (keeping in mind the high threshold of risk and urgency required) the interim orders regarding service are:

1. The application be heard on an urgent, *ex parte* basis and the usual requirement for service be dispensed with.
2. Urgent extraction of orders.

This means that if the court grants these orders sought you won't be required to serve the respondent as per the usual process of special service. Urgent extraction of orders means you are asking the court to produce a typed sealed copy of the interim orders urgently so that you can provide a copy of the orders to the appropriate agencies (if relevant).

If you are not seeking orders on an *ex parte* basis, the usual requirements for service will apply. If the application is filed in a Form 1 Initiating Application, special service is required. If the application is filed in a Form 2 Application in a Case, ordinary service is acceptable.

Service of Form 1 – special service by hand (preferred)

Service by hand involves giving the documents to a server, who gives the documents to the other party and completes an affidavit as proof of service. A server can be a family member or friend over 18 years, or a professional process server who charges fees for their service.

Make sure to check the provisions of any Family Violence Restraining Order which may be in place between you and the other party, even if you are using a third party to give the documents to the other party.

The documents to be served on the other party include:

- your court application (such as the Form 1 application, affidavit and financial statement);
- brochures such as [Marriage, Families and Separation](#), and [Priority Property Pools under \\$500,000 cases](#) (if applicable);
- an [Acknowledgment of Service](#) (Form 6) with a written request that the other party sign it and return it to you as soon as practicable, as well as a stamped self-addressed envelope;
- an [Affidavit of Service](#) (Form 7) signed by the server.

If the other party has a lawyer, ask them if they will accept service of the documents for that party. If they agree, you can serve the lawyer who will sign the Acknowledgement of Service (Form 6). You do not need to complete an Affidavit of Service.

Getting the lawyer's agreement is important, because a lawyer may have given the other party legal advice, but that doesn't mean they will be representing them throughout the proceedings. The documents will not be considered properly served if you send them to a lawyer and that lawyer doesn't accept service.

Service of Form 1 – special service by post or electronic communication

Service by post or electronic communication (email) involves sending the documents to the other party, who signs and returns an Acknowledgment of Service.

You should only attempt service by post or electronic communication if you are confident the other party will sign and return the Acknowledgement of Service to you, and subject to the provisions of any Family Violence Restraining Order which may be in place between the parties.

Without this, the court cannot be sure the other party has received the documents. If you attempt service by post or electronic communication and do not receive the signed Acknowledgment of Service, you may need to arrange service by hand.

If serving by **post**, the documents to include are:

- your application (such as Form 1 application, affidavit and financial statement);
- brochures such as Marriage, Families and Separation, and Priority Property Pools under \$500,000 cases (if applicable);
- an Acknowledgment of Service (Form 6) with a written request that the other party sign it and return it to you as soon as practicable, as well as a stamped self-addressed envelope;
- an Affidavit of Service (Form 7) signed by the server.

If serving **electronically**, the documents to include are:

- your application (such as Form 1 application, affidavit and financial statement);
- brochures such as Marriage, Families and Separation, and Priority Property Pools under \$500,000 cases (if applicable);
- an Acknowledgment of Service (Form 6) with a written request that the other party sign it and return it to you as soon as practicable;
- a cover sheet stating the sender's name, address and email, the name of the person to be served and a statement as follows: "I enclose by way of service...";
- an Affidavit of Service (Form 7) signed by the server.

If a lawyer representing the person agrees, in writing, to accept service of the document, you can send it to the lawyer. The lawyer should return a signed Acknowledgment of Service (Form 6).

Service of Form 2 – ordinary service

If the respondent has given an **address for service**, you can serve documents by:

- putting the documents in a sealed envelope addressed to the person and delivering them or posting them to the address given for service, or
- sending the documents to a fax number or email address provided in the address for service.

If the respondent has **not given an address for service**, you can serve documents by:

- putting the documents in a sealed envelope addressed to the person and delivering them or posting them to the person's last known address or place of business, or
- handing the documents to the person.

If the respondent has a **lawyer**, you can serve documents by:

- checking if the lawyer representing the person agrees, in writing, to accept service of the document, and
- sending the documents by post or email to the lawyer.

Step 4: the court hearing

First hearing

***Ex parte* – first hearing**

If the matter is deemed suitable for an urgent *ex parte* hearing after filing on the eCourts portal, you will receive an emailed letter (via eCourts) from the Duty Registrar with the listing date and time, and requirements for service (that is, either no requirement, or service on short notice).

Depending on the urgency of the matter and seriousness of the risk, the court may:

- Make the interim injunctions sought at the first hearing if satisfied of urgency and risk.
- Make orders for service on the respondent before making a decision even if the court listed your matter as an *ex parte* hearing. This would mean you would be required to serve the respondent and come back to court for a further hearing in the near future after the respondent has been given an opportunity to be heard.

If the court is not satisfied regarding urgency and risk, the matter will likely be programmed to a further directions hearing or an interim hearing at the court's next available date, with orders for the respondent to be served.

Non *ex parte* – first hearing

Prior to the first hearing, the parties should attempt negotiations and, if no agreement has been reached on the day of the hearing, the parties or their lawyers should again attempt some final negotiations prior to appearing before the Judicial Officer. If unrepresented, a party can request the assistance of the duty lawyer at court. If there are no duty lawyers available, the unrepresented party should be prepared to negotiate directly with the other party or their lawyer.

If there is an agreement, the parties should as soon as possible advise the court officer that a Minute of Interim Consent Orders is being prepared and signed. A Minute of Interim Consent Orders is a written agreement made between the parties; it can be handwritten or typed and must be signed by the parties. Once you have a signed copy of the Minute, you should make a copy for each party and prepare to hand up the signed original to the Judicial Officer when the matter is called.

If there is no agreement, the Judicial Officer will address each party in the court room and ask questions to clarify facts. If the respondent has not filed documents, it is likely they will be given an opportunity and timeframe to do so. The court may make a decision about granting the injunction or not during this hearing even if the respondent has not filed documents. If the court is not satisfied it has all the relevant information required to make a decision, the court will schedule a date for an interim hearing.

Second hearing – interim hearing

At the interim hearing, if responding documents have been filed, the Judicial Officer will likely listen to submissions from the parties as to what you are seeking and the grounds for such and make a decision about the injunction on an interim basis.

If there are no responding documents filed but there is proof the respondent has been properly served and there is urgency involved, the court can still make a decision about injunctions on an interim basis, particularly if the respondent is present in court. The balance of the matter otherwise remains programmed towards further dispute resolution or Trial.

Step 5: after the court hearing

If the court grants you the interim injunction, the next step is to download the order from the eCourts portal under 'My Current Matters'. It may take up to 7 days for the order to appear unless the court directs urgent extraction of your orders.

If the respondent is not present at court, write to them immediately after the hearing to state you have an injunction, and attach the order if it is available. If you do not yet have the order, write to the respondent and clearly state what the injunction stops them from doing.

You should contact any relevant third parties such as the respondent's real estate agent, conveyancing agent and/or the bank to let them know you have an injunction and the terms of such injunction.

Responding to an application

A respondent to an application for a property injunction can do the following:

- negotiate with you directly about the property injunction (and file a Minute of Consent Orders if there is agreement);
- oppose the application by submitting it is unnecessary because they deny the conduct alleged by you;
- oppose the application by submitting they need to sell property or spend funds for legitimate living or business expenses;
- oppose the application by submitting they need to be able to conduct their financial affairs post separation and any property sold or funds spent will be appropriately taken into account and disclosed during property settlement proceedings.

Responding documents

If the applicant has filed a Form 1 Initiating Application, the responding documents required are:

1. A [Form 1A Response to Initiating Application](#);
2. [Affidavit](#) in support or [Case Information Affidavit \(PPP500\)](#) if the matter meets the guidelines for a [PPP500 case](#) (that is, if your case involves total net property excluding superannuation of \$500,000, or less, and there are no entities that might require expert investigation such as companies or trusts, and you are not seeking parenting orders);
3. [Form 13 Financial Statement](#) or [Financial Statement \(PPP500\)](#);
4. Although not required, it is good practice to include a [cover letter](#) to court, stating which documents you are seeking to file.

If the applicant has filed a Form 2 Application in a Case, the responding documents required are:

1. A [Form 2A Response to Application in a Case](#);
2. [Affidavit](#) in support;
3. [Certificate of Conferral](#);
4. An amended [Form 13 Financial Statement](#) (consider seeking leave to file, and filing, an amended Form 13 Financial Statement if the respondent's financial situation has changed significantly since first filed);
5. Although not required, it is good practice to include a [cover letter](#) to court, stating which documents you are seeking to file.

Responding documents need to be filed and served 7 days before the hearing date. If the application has been listed on short notice, responding documents should be filed at least 2 working days before the hearing date, if possible.

Enforcement when injunction is breached

When the court makes orders, all parties need to follow them. Otherwise, the court can impose penalties. The parties should:

- take all reasonable steps to follow the order, or
- seek [legal advice](#) if you can't follow the order, or the order becomes impossible to follow.

If you think the respondent is breaching the injunction order, you can make an enforcement application to the court. The court can enforce an order to make a person comply with the order or vary an order to make sure everyone can comply with it in the future.

A person breaches an order if they deliberately don't comply with it or make no reasonable attempts to comply with it. They also breach an order if they help someone else to avoid complying with it or prevent someone else complying with it.

The court may take such action as it thinks appropriate to punish the respondent for not obeying an injunction, known as a 'contravention'. The penalties include:

- Requiring a person to enter into a good behaviour bond. Breaching the bond can result in a fine or other penalty being imposed.
- Imposing a sentence by order, for example, a community service order.
- Imposing a fine.
- Imposing a sentence of imprisonment (if the contravention was intentional or fraudulent).

In the most serious cases, a court can punish a person for contempt by sentencing them to prison or a fine or both.

Enforcement documents

An applicant seeking enforcement of an injunction is required to file:

1. A [Form 2 Application in a Case](#), and select 'enforcement hearing – financial obligation' in Part C;
2. [Affidavit – General](#);
3. [Certificate of Conferral](#);
4. [Cover letter](#) to court.

A respondent who is responding to an enforcement application is required to:

- attend court on the court date and answer questions from the Judicial Officer about why they have not complied with orders;
- produce all documents requested by the applicant;

- file a [Form 13 Financial Statement](#) at least 7 days before the court date.

Help with lodging your application

The self-serve kiosk is available at the Family Court of WA for you to prepare, scan and upload your court documents through the [eCourts Portal](#). Access to the public kiosk computers is available on weekdays from 8:30am to 4.00pm.

In the kiosk, you can:

- register an account on the eCourts Portal;
- prepare documents;
- scan and upload documents to the eCourts Portal;
- have documents witnessed by a Justice of the Peace;
- be referred to the Legal Aid WA duty lawyer.

You are responsible for making sure all your paperwork is in order. Family Court staff can help you with filing your documents on eCourts and information about the processing of your application, but **they cannot give you legal advice**. Call the Family Court customer service line on (08) 9224 8222 for information.

Signing and witnessing

Who can witness your signature

You must sign the court documents in front of a Justice of the Peace, notary public or lawyer.

There is a Justice of the Peace in Perth city at:

- The Family Court of WA registry Monday-Friday 9:30am to 1:00pm.
- Citizen's Advice Bureau Perth Office at 25 Barrack St Monday-Friday 9:30am to 3:30pm.
- City of Perth Library, 573 Hay Street, Perth, Sunday 12.30pm to 2.30pm.
- Perth State Library, Perth Cultural Centre, 25 Francis Street, Perth, Monday 11.00am to 2.00pm.

The Department of Justice has a list of [Document Witnessing Centres](#) where you can find a Justice of the Peace in your local area.

Remember to take photo ID such as a driver's license or passport so your identity can be confirmed.

How can Legal Aid WA help?

Legal Aid WA can give limited legal advice and assistance in relation to Property Injunctions. Note: in most circumstances Legal Aid WA does not assist with preparation of documents relating to property settlement. You may be eligible for a grant of legal aid in limited circumstances.

To find out what assistance we can give you, call the Legal Aid WA Infoline on 1300 650 579 Monday to Friday, 9.00am to 4.00pm. First Nations callers can phone Legal Yarn on 1800 319 803 to access a culturally safe telephone information service for Aboriginal and Torres Strait Islander People; staffed by mob, for mob.

We have a duty lawyer service at the Family Court of WA. The service is for people with urgent family law matters or who have a court date that day. The service is mainly for parenting matters. Whether the service can help you will depend on your situation, the urgency and seriousness of your matter, and the needs of other people using the service on the day. This is a free drop-in service (no appointment required).

The service is available at the Family Court at Perth, Monday to Friday, 9.00am to 4.00pm, and in regions when the Family Court is on circuit in Broome, Kalgoorlie, Geraldton, Bunbury and Albany.

See more at Legal Aid WA's [Get Legal Help](#) page.

Checklist of documents to be filed

New court proceedings

- [Form 1 Initiating Application](#)
- [Affidavit – General](#) or [Case Information Affidavit \(PPP500\)](#)
- [Form 13 Financial Statement](#) or [Financial Statement \(PPP500\)](#)
- [Undertaking as to damages](#)
- [Cover letter](#)
- [Fee Exemption – General](#) or [Fee Exemption- Financial Hardship](#) (if needed)
- Form 7 [Affidavit of Service](#) (signed by server)
- Form 6 [Acknowledgment of Service](#) (signed by respondent or their lawyer)
- Brochures: [Marriage, Families and Separation](#), and [Priority Property Pools under \\$500,000 cases](#) (if applicable)

Responding to new court proceedings

- [Form 1A Response to Initiating Application](#)
- [Affidavit – General](#) or [Case Information Affidavit \(PPP500\)](#)
- [Form 13 Financial Statement](#) or [Financial Statement \(PPP500\)](#)
- [Cover letter](#)
- [Fee Exemption – General](#) or [Fee Exemption- Financial Hardship](#) (if needed)
- Form 7 [Affidavit of Service](#) (signed by server)
- Form 6 [Acknowledgment of Service](#) (signed by applicant or their lawyer)


Ongoing court proceedings


- [Form 2 Application in a Case](#)
- [Affidavit – General](#)
- [Form 13 Financial Statement](#) (if needed)
- [Undertaking as to damages](#)
- [Certificate of Conferral](#)
- [Cover letter](#)
- [Fee Exemption – General](#) or [Fee Exemption- Financial Hardship](#) (if needed)
- Form 7 [Affidavit of Service](#) (signed by server)
- Form 6 [Acknowledgment of Service](#) (signed by respondent or their lawyer)

Responding to ongoing court proceedings

- [Form 2A Response to Application in a Case](#)
- [Affidavit – General](#)
- [Form 13 Financial Statement](#) (if needed)
- [Certificate of Conferral](#)
- [Cover letter](#)
- [Fee Exemption – General](#) or [Fee Exemption- Financial Hardship](#) (if needed)
- Form 7 [Affidavit of Service](#) (signed by server)
- Form 6 [Acknowledgment of Service](#) (signed by respondent or their lawyer)

LEGAL AID WA CONTACTS

 **Infoline:** 1300 650 579

 **Legal Yarn:** 1800 319 803 (for First Nations callers)

 **Website/InfoChat:** www.legalaid.wa.gov.au

Interpreting and relay services to help you contact us:

 **Translating & Interpreting Service:** 131 450

 **National Relay Service:** 133 677

Perth office

32 St Georges Terrace,
PERTH WA 6000
1300 650 579
(08) 9261 6222

Great Southern Office

Unit 3, 43 – 47 Dukie Street,
ALBANY WA 6330
(08) 9892 9700

Southwest Office

7th Floor, Bunbury Tower,
61 Victoria Street,
BUNBURY WA 6230
(08) 9721 2277

Midwest & Gascoyne Office

Unit 8, The Boardwalk,
273 Foreshore Drive
GERALDTON WA 6530
(08) 9921 0200

Goldfields Office

Suite 3, 120 Egan Street,
KALGOORLIE WA 6430
(08) 9025 1300

Pilbara Office

28 Throssell Road,
SOUTH HEDLAND WA 6722
(08) 9172 3733

West Kimberley Office

Upper Level, Woody's Arcade,
15 – 17 Dampier Terrace
BROOME WA 6725
(08) 9195 5888

East Kimberley Office

98 Konkerberry Drive
KUNUNURRA WA 6743
(08) 9166 5800

Indian Ocean Office

Administration Building,
20 Jalan Pantai, Christmas
Island, INDIAN OCEAN WA
6798 (08) 9164 7529

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