



FEDERAL CIRCUIT
AND FAMILY COURT
OF AUSTRALIA

Before you file – pre-action procedure for financial or property cases

This brochure provides information for people considering applying to the Federal Circuit and Family Court of Australia (the Court) for financial or property orders. In particular, it provides information about pre-action procedures, which are steps that must be taken before starting a case.

The aim of the pre-action procedures is to allow the parties to explore possibilities for resolution of their dispute. Where a dispute cannot be resolved, the procedures require that parties narrow the issues that need a court decision. This should minimise legal costs and if possible, resolve disputes quickly, ideally without the need to apply to a court.

Pre-action requirements also apply to parenting disputes. For more information see the brochure *Before you file – pre-action procedure for parenting cases*.



What is required?

The pre-action procedure applies to anyone considering starting a case, anyone named as a respondent if a case is started, and their lawyers.

The Family Law Rules require prospective parties to genuinely try to resolve their dispute before starting a proceeding in the Court. This is called taking '**genuine steps**' to resolve the issues in dispute. Except where an exemption applies, all prospective parties must:

1. read the pre-action procedures, making sure to understand that the duty of disclosure applies while preparing for proceedings
2. make **inquiries** about, **invite** the other parties to and where it is safe to do so, **participate** in dispute resolution services, such as family counselling, negotiation, conciliation or arbitration
3. if dispute resolution is unsuccessful, write to the other parties, setting out their claim and exploring options for settlement, and
4. comply, as far as practicable, with the duty of disclosure by exchanging relevant documents.

For further information about the duty of disclosure, see the brochure, *Duty of Disclosure*.

What applications are exempt?

You may be exempt from complying with the pre-action procedures if one of the following applies:

- there are allegations of family violence, or a risk of family violence
- the application is urgent
- the applicant would be unduly prejudiced if required to comply with pre-action procedures
- a previous family law application has been filed by one of the parties in the last 12 months.

You must indicate which exemption is applicable in your [Genuine Steps Certificate](#), which must be filed at the time of filing your *Initiating Application* (if you are the applicant) or your *Response to Initiating Application* (if you are the respondent). You will also be required to explain why this exemption applies in the affidavit filed in support of your *Initiating Application* or *Response to Initiating Application*.

The Court will then review your *Genuine Steps Certificate* and assess compliance with the pre-action procedures on the first court date.

Compliance

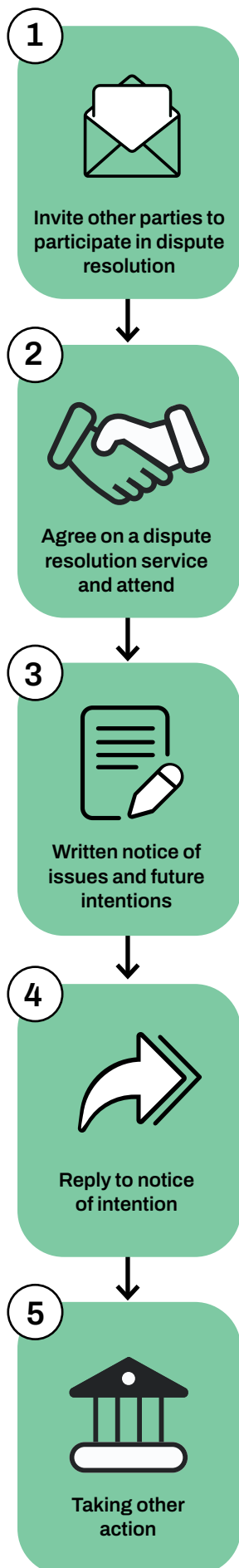
The Court expects parties to take a sensible and responsible approach to pre-action procedures.

When a party starts a case, the Court will consider whether the pre-action procedures have been complied with and, if not, what the consequences should be.

Where there is unreasonable non-compliance, the Court may order the non-complying party to pay all or part of the costs of the other party or parties in the case. The Court may also take compliance or non-compliance into account when making orders about how your case will progress through the Court.

Examples of non-compliance with pre-action procedures include failing to:

- send a written notice of a proposed application to the other party
- provide sufficient information or documents to the other party
- follow a procedure as required by the pre-action procedures
- respond appropriately within the nominated time to the written notice of proposed application, and
- respond appropriately within a reasonable time to any reasonable request for information, documents or other requirements of this procedure.



The pre-action procedure – step-by-step

STEP 1: Invite the other parties to participate in dispute resolution

A person who is considering filing an application in the Court must:

1. Give a copy of this brochure and the pre-action procedures (from Schedule 1 of the rules) to the other prospective parties.
2. Invite the other parties to participate in dispute resolution. For more information about dispute resolution or to find an agency near you:
 - go to www.familyrelationships.gov.au, or
 - call 1800 050 321.

STEP 2: Agree on a dispute resolution service and attend the service

Each prospective party must:

- agree on an appropriate dispute resolution service, and
- make a genuine effort to resolve the dispute by participating in dispute resolution.

If an agreement is reached, you and the other party can formalise your agreement by either:

- entering into a financial agreement, with the assistance of a lawyer, or
- applying to the Court for consent orders.

STEP 3: Written notice of issues and future intentions

If no dispute resolution service is available, a person refuses or fails to participate, or agreement is not reached through dispute resolution, a person considering applying to the Court must give the other person/s written notice of the intention to start a proceeding. The written notice is called a “notice of intention”. The notice of intention must set out:

- the issues in dispute
- the orders to be sought if a case is started
- a genuine offer to resolve the issues, and
- a nominated time (at least 14 days after the date of the letter) within which the other person must reply.

This brochure should be attached to the notice of intention.

STEP 4: Reply to the notice of intention

If you receive a notice of intention, you must reply in writing and state whether the offer is accepted within the nominated time.

Where agreement is reached, you and the other party should consider formalising your agreement by entering a financial agreement or filing an Application for Consent Orders.

If you do not accept the offer, you must set out in a letter:

- the issues in dispute
- the orders you will seek if a proceeding is started
- a genuine counter offer to resolve the issues, and
- a nominated time (at least 14 days after the date of the letter) within which the initiating party must reply.

If you do not respond, the initiating party’s obligation to follow the pre-action procedures ends.

STEP 5: Taking other action

Where an agreement is not reached after reasonable attempts to resolve it by correspondence, other appropriate action may be taken to resolve the dispute, including filing an application in the Court.

Legal advice

You should get legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your situation. A lawyer can also help you reach an agreement with the other party without going to court.

You can get legal advice from a:

- legal aid office
- community legal centre, or
- private law firm.

Court staff can help you with questions about court forms and the Court process, but cannot give you legal advice.

Personal safety

If you have any concerns about your safety while attending court, please call 1300 352 000 before your court appointment or hearing. More detail may be found in the fact sheet [Do you have fears for your safety when attending court?](#)

Family Relationship Services

For help resolving a dispute out of court, go to www.familyrelationships.gov.au or call 1800 050 321. These services provide assistance to anyone who is affected by family relationship or separation issues.

More information

For more information, including access to any of the forms or legislation, publications listed in this brochure:

- go to www.fcfcoa.gov.au
- live chat on the website
- call the Court on **1300 352 000**, or
- visit a family law registry near you

Live Chat

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