

Memorandum re: Completing Your Financial Statement

Introduction

This memorandum is prepared to help our clients complete their financial statements. The financial statement is an affidavit. You will swear to the truth of its contents. You must therefore take time to complete it without omission or exaggeration. If it contains mistakes, however innocent, someone may use them to criticize your honesty or competence. It will not be an answer for you to say, “My lawyer put those in”.

The form attached is your working copy only. Do it in pencil, for you will probably be changing your figures as you review them. We will be reviewing the statement in detail with you before it is put into final form and eventually sworn.

If any item you fill in is not an accurate or exact figure, add the letters “est.” to signify that you are making your best estimate. If you are unsure of an amount but will be able to determine the correct figure later, add the letters “TBD” to signify “To be determined”.

It is helpful to prepare notes or footnotes to be read in conjunction with and attached to the financial statement. For example, if your income this year includes a sizeable bonus which will not be repeated next year, then put a number next to the amount you have inserted and on a separate sheet, list the footnotes with the explanation. Feel free to use as many footnotes as necessary in order to properly explain your financial circumstances.

All Income and Money Received

Here, the emphasis is on *all* income. You must list income from all sources, including Child Tax Benefit, GST, interest and even income which you did not report on your income tax returns. You can omit interest on your RRSP, however.

Show your current income, not what shows on your last year’s financial statement or last year’s income tax return. If you have had a major change in income (*e.g.*, a big raise or a dismissal) in the last year, bring it to our attention to deal with so the figures will not be perplexing on an annual basis. Your income from employment should be your gross income, *i.e.*, your income before deductions for income tax, Canada Pension and so on. If your income fluctuates, then indicate that on the statement and estimate your average yearly income.

Other Benefits

“Other Benefits” include such things as car expenses beyond reimbursement for mileage, leasehold inducements and any other related benefits you receive through business or employment. Although they are not directly income, they are a financial benefit to you and must be disclosed.

If you are not taxed on the benefit and do not know its value, then please make inquiries and give your honest estimate of the worth of the benefit.

Actual and Proposed Budgets

It is usual to use the last twelve-month period, but if there have been dramatic changes such as the birth of a child, a move to a new city or a recent separation, it may be more helpful to use a shorter period.

Actual Budget:

The expenses you show should reflect your current standard of living even though it may not be the standard of living you enjoyed during cohabitation or what you hope to enjoy when the matter is resolved.

Proposed Budget (last section of financial statement):

The “Proposed Budget” should be used to demonstrate an expected change in your circumstances of what you expect to spend when this matter is concluded. For example, you may be planning to move to an apartment from the matrimonial home. The proposed budget should reflect your estimated expenses in the new apartment. If you expect no significant changes, the budget need not be completed.

General Comments Regarding Expenses:

If your spouse is currently paying some of your expense, then indicate this either with a footnote or with an asterisk beside those expenses. Similarly, if you are paying some or all of the costs of two residences (as sometimes happens after separation), then insert all of the expenses you are making and giving the explanation by way of footnote.

If you are unsure of expenses, then start keeping track on a daily basis of your bills for all items, including groceries, toiletries, items paid for by cash and so on. You will be surprised at how quickly expenses add up.

Be careful not to double-count your expenses. For example, if you purchase clothes on a credit card, this item should be reflected under the clothing section and not under the loan payments section. Likewise, if you buy your general household supplies at the grocery store, do not duplicate that cost in your groceries expenses.

If the children are living with you, your expenses will include costs for them.

Some items will be difficult to estimate. For example, you have probably not kept track of your car maintenance over the last year. Please think back carefully, review your bills and estimate your actual costs where you are not sure of the exact amount.

If you are covered by a medical, dental or drug plan, then list only the portion of the expense that you personally have to pay. Use a footnote to explain that the balance is covered by

a plan. This is important, for if the coverage is by the reason of your spouse's plan, it may not continue in full (at least for your expenses) after divorce.

Make sure your income tax figure states the actual amount payable. Adjust the figures if you expect a refund or put in a footnote to explain. Note that there will be a big adjustment in your present tax level when spousal support is taken into account. If you are currently paying or receiving spousal support pursuant to a court order or written agreement, be sure your current figures reflect the fact that the payments will be included in the income of the recipient spouse and deducted from the income of the paying spouse. If support has not yet been determined or is being paid on a voluntary basis, then indicate this with a footnote and we will assist you in calculating your proposed expense for tax.

Please refer to your pay stubs or income tax returns to establish the figures for the deductions from your income.

Many people ask about the distinction between entertainment and recreation. While there is an obvious overlap, our general distinction is that entertainment refers to passive activities such as going to the theatre or to movies. Recreation refers to more active activities such as skiing, bowling, boating and so on. The important factor, however, is that you know what you have included under each category. Again, use a footnote if necessary.

Loan payments should include only the regular payments you are, in fact, making, not what you owe or should be making. There is a provision for the listing of debts later in the statement.

Show an expense for RRSP contributions only if you are currently making them or have done so within the timeframe you established at the beginning of the budget section of the statement.

Where expenses are non-monthly by nature (for example, gifts, which tend to balloon around December, and are not very high the rest of the year), please add up your estimated total for the year, and divide that by 12 to obtain a monthly estimation.

Summary of Income and Expenses

The summary of income and expenses is very important. When completing this section, if you show a deficit of over \$100, please re-examine your figures to ensure that the deficit can be explained to us. If you are running a deficit, you must show how this is being financed. There are generally five ways in which a deficit can be explained:

- (1) you borrowed money;
- (2) you spent savings;
- (3) you have not listed all your income or you have had a recent drop in income;
- (4) you are exaggerating your expenses;
- (5) you have not paid certain annual expenses, such as realty taxes, yet.

Assets

Please go through each category and be sure that all of the property you had on the valuation date is listed for the following dates:

- (a) the date of marriage;
- (b) the valuation date (see below);
- (c) the date of the statement – this is the day you are completing the financial statement form.

The valuation date is an important date. That is the date that you and your spouse separated *without a reasonable prospect of resuming cohabitation*. Sometimes this date is obvious, but often it is not. **Before completing this document, please be sure you have discussed with me the valuation date to be used.**

You should use “fair market value”. Fair market value is the price a willing buyer would pay to a willing seller in an arm’s length transaction on the open market. When we review your financial statement, we will discuss whether another value is more appropriate in the circumstances (such as “book value”).

Fill in the estimated market value of your assets without deduction for any encumbrance. The encumbrance (such as the mortgage or a debt) will be shown on the statement under “Debts and Other Liabilities”.

List only the property registered in your name. Do not show the property registered in your spouse’s name. Provide us with a separate list of the property that is in your spouse’s name, even if you have possession of it, use it regularly or are making a claim to it.

If you own property jointly with another person, whether or not it is your spouse, then include only your interest in the property. For example, if you own the matrimonial home jointly with your spouse, include only one-half of the estimated value. If you own property through a partnership, then include only your percentage interest in the property.

Land

List all of the land you owned at the valuation date (or, if support is in issue, that you now own) in accordance with the directive above. Show your percentage interest in the property. Include the approximate or expected selling price of the land without deduction for mortgages or other encumbrances. Those will be included later under “Debts and Other Liabilities”.

General Household Items and Vehicles

The value which should be stated in these columns is the *resale* value of the item and not the replacement or insurance value. Look in the newspaper or consult a dealer with respect to the value of your car.

Generally, the value of household items (unless the asset is an antique and appreciating) would be around one-quarter of the replacement value. This will change, of course, if the item was recently purchased, or if it has a high resale value. If you have special works of art or jewellery, they should be listed as a separate category. Jewellery is generally worth 35% of the replacement value.

List only *your share* of the furniture and appliances. If an item was owned by your spouse prior to the marriage or is clearly owned by your spouse now, then do not list it. You may need to separate all of this out on a schedule attached to the financial statement.

It is difficult to estimate the value of your household contents, but you should give it your best effort. Do not list every single knife and fork. It is usually good enough to say “typical household contents of no special value”. Alternatively, you could list items of particular value like the dining room suite, master bedroom furniture, etc., and leave the rest as “miscellaneous”.

If you and your spouse have already agreed on an equal division of the contents of the house and vehicles and you are satisfied with the division, then there is no need to complete this section. Be sure, however, that you are, in fact, satisfied with the division and that it has taken into account personal items of special value.

Bank Accounts, Securities and Pension

List every bank account you have, even if the balance is zero. List accounts registered in your name or in your name jointly with another person (whether or not that person is your spouse) and money held for you in someone else’s account. If you are holding money in trust for someone else (such as a parent or a child), include the money but show the explanation in a footnote.

Registered Retirement Savings Plans (RRSPs) should be listed at the gross value without deduction for tax consequences. We will discuss with you whether or not a tax deduction is appropriate and, if so, we will assist you in calculating the amount which will be included under “Debts and Other Liabilities”.

If you are the owner of a pension from which you are or will be entitled to receive payments, you should write immediately to the Pension Fund Administrator and obtain a written statement as of the date of marriage, the valuation date and the date of statement with respect to the pension amounts and your contributions. You should obtain and provide us with your pension booklet and any other documents pertaining to the pension benefits so that we can retain an expert to determine the value of your pension. Note that the valuation usually costs about \$900 and somewhat more if a valuation is required both at marriage and at separation.

Under “Securities”, you should include Mutual Funds, Canada Savings Bonds (even if they are held for the children), stocks, mortgages, etc. Obtain your most recent statement or consult your broker.

Life and Disability Insurance

Include only the insurance plans of which you are the owner. Do not include your spouse's plans, even though you may be a beneficiary. The "cash surrender value" is not the amount you will eventually receive if benefits are paid out but rather the amount you could "cash in" your policy for now. A "term" insurance policy has no cash surrender value.

Accounts Receivable

"Accounts Receivable" include any money owing to you by way of loan, unpaid invoices, tax refunds and so on.

Business Interests

"Business Interests" may be extremely complicated. If you own a business, it may be necessary to retain a business valuator. For the time being, list the book value of your business and give us supporting documentation from your accountants. Let us know of assets worth more than the book value so we can make preliminary adjustments. You can include your interest in an incorporated company either here or under "Securities".

Other Property

This should include any other property you own that has not already been included in the financial statement.

Any property that you have a beneficial interest in must be included, whether or not it is in your name. For example, if your parents hold property in trust for you, you must include it either here ("Other Property") or under the appropriate section ("Land", "Bank Accounts, Securities and Pensions" and so on).

Debt and Other Liabilities

List the total amount owing on all debts in your name alone. If you owe money jointly with your spouse (for example, the mortgage), then list only one-half of the amount owing. If the debt is in your spouse's name alone, do not list it. (You may list it in a footnote or separate sheet for us.) If you guaranteed your spouse's debt, list this as a contingent liability.

The item people usually forget is tax arrears, especially professionals with a January year end. If you pay your taxes by installments, then obtain your statements from Revenue Canada which are closest to the valuation date and to the date of the statement.

Speak to us about a suitable tax liability for your pension and other assets.

Property, Debts and Other Liabilities on Date of Marriage

Under this section, you should put in the value of your property and debts which you held at the close of business on your wedding day. It is probably very difficult for you to do this in retrospect, but you should fill in your best estimate. As we explained to you, you are entitled to deduct from your net family property the value of all assets owned at the date of marriage. However, it is your responsibility to prove any deductions you wish to claim. You should therefore collect *all* supporting documentation for the deduction you claim.

You deduct debts then owing, such as mortgages, incomes taxes not yet paid, etc.

If the home you were living in at the date of separation was owned at the date of marriage, then you are not able to deduct it from your net family property. It cannot be listed on the statement under this section. If, however, you owned *another home*, then that home is not a matrimonial home as defined in the *Family Law Act*, and can be deducted. Be sure to discuss this with us if you are in doubt. This also applies to a cottage or recreational property which is seasonally used as a home.

Excluded Property

In this column, you must list those assets which you earlier showed as being owned on valuation date and which are:

- (a) property (other than a matrimonial home) that was acquired by gift or inheritance from a third party *after* the date of marriage;
- (b) damages for personal injury acquired during marriage;
- (c) proceeds for life insurance acquired during marriage;
- (d) property (other than a matrimonial home) into which the above can be traced; or
- (e) property which you agreed (by way of domestic contract or marriage contract) would not be included in your net family property.

For example, if, during the marriage, you inherited \$30,000 from which you spent \$10,000 on travel, \$10,000 on paying down the mortgage on the matrimonial home and \$10,000 to buy shares you still owned at valuation date, then include *only* the shares at their valuation date value.

If you are in doubt about whether an item is excluded or not, fill it in with an asterisk or a footnote and we will discuss it when we review your statement.

Disposal of Property

If your marriage lasted less than two years, list all the property you sold during the marriage. If the marriage was longer than two years, list all property sold in the last two years. Be prepared to show where the proceeds of sale went.

Summary

The burden of proving items you want credit for (such as deductions from your net family property) or that you want excluded (such as gifts) is yours. You must therefore accumulate all documents which will prove both that you owned the asset and the value of the asset.

When you have completed this document in draft, please arrange to meet with me to review it and put it in final form. Once we are satisfied that the figures truly represent your financial position, it will be finalized and sworn.

Caution

We emphasize that responsibility for accuracy is always yours, even though you persuade us your figures seem to be accurate. Once you swear that it is true, you cannot excuse an error by saying "This is what my lawyer wrote down". If there is a mistake, then you, and not your lawyer, will suffer the criticism of the judge and opposing lawyer. The financial statement is an affidavit. It is sworn under oath by you. You are responsible for the truth of your figures.

Help is Available

If you have difficulty completing the form or need assistance, please call our office.