

Financial Affidavit and Mandatory Disclosure Instructions and Suggested Procedures

FINANCIAL AFFIDAVIT AND MANDATORY DISCLOSURE INSTRUCTIONS AND SUGGESTED PROCEDURES

IMPORTANCE OF THE FINANCIAL AFFIDAVIT

The financial affidavit is the most important document you will prepare in your case. THE FINANCIAL AFFIDAVIT MUST BE ACCURATE. A sworn financial affidavit and disclosure of certain financial documents (mandatory disclosure) is required by the Florida Supreme Court. The financial affidavit must be exchanged prior to entering into negotiation and mediation to settle your case, while mandatory disclosure may be waived by agreement of the parties. The financial affidavit is the document relied upon to come to agreement. It is the document relied upon by the Court. If the financial affidavit is not accurate, the judge may not believe anything else you say. If the financial affidavit is not accurate, any agreement or court order may be overturned FOREVER.

We are providing this checklist to enable you to provide us with the necessary information so we can provide mandatory disclosure and prepare the final draft of the Financial Affidavit together. This task should be a priority. The financial affidavit and mandatory disclosure should be completed as quickly as possible. If you find that you cannot do this alone for any reason, please contact us immediately, so we can determine what help you need and how to help you.

DIRECTIONS

Some of the terms and items below may be unfamiliar to you. You may not be able to complete each item. Some of the items are just suggestions. Just put a question mark next to the item of concern and we will help you. There are extra spaces in each category for items you may want to add. Please complete the first draft of the financial affidavit in pencil and with as much detail as possible, to the best of your ability. Again, if you find that you cannot do this alone for any reason, please contact us immediately, so we can determine what help you need and how to help you.

INCOME INFORMATION

- 1. Unemployed.** If you are unemployed, note in the margin of the financial affidavit that information. List your prior employment, dates of beginning and end, salary, benefits, bonuses, etc. on a separate sheet of paper to discuss with us. If you are going to be employed, or are looking for a job, give us the specifics on a separate sheet of paper to discuss with us. If you are collecting unemployment, gather three of the most recent statements.
- 2. Employed.** Gather the following before you begin, if applicable. Place them in a folder labeled "income," and tab the documents in the following order:

- A. 3 years personal, partnership, trust, and corporate tax returns (if interest is greater than 30%), with all schedules.
- B. 3 years gift tax returns and intangible tax returns.
- C. If last year's tax return has not been filed:
 - 1. W-2 Forms
 - 2. 1099 Forms
 - 3. Schedule K-1 Forms
- D. 3 most recent pay stubs or other evidence of earned income in last 3 months.
- E. All loan applications and financial statements for the last 3 years, such as car loan, mortgage applications, financial statements for business or personal loans.
- F. Bonus or perquisites (extras paid for by your employer, such as health Insurance, car expense), overtime statements or lists.
- G. Interest and dividend income statements.
- H. If self-employed, most recent Statement of Income for the current year, and project income for the next twelve months.
- I. If partnership or S Corporation income, determine history of actual cash distributions from the entities.
- J. If capital gains are reported, get five years of tax returns instead of one, and determine if such gains can be expected in the future.
- K. Any other sources of income, such as rental income (gather rent amount and expenses that offset the income from the rental property).
- L. Health insurance premium information, and then exclude the children's portion.

3. **Income determination:**

- I. Begin with the latest tax return.
- II. Make adjustments from the tax return according to the following:
 - 1. Changes in salary, wage rates, bonus arrangements, overtime, etc.
 - 2. Changes in interest and dividend income.
 - 3. If self-employed, project income for the next twelve months.
 - 4. If partnership or S Corporation income, determine actual cash distributions.
 - 5. If recurring capital gains, determine if it can be expected.
 - 6. Determine if employer reimbursements for expenses reduce living expenses included in the Average Monthly Expenses section.
 - 7. Disclose the sources of all income other than salary in footnotes or in the margin.
 - 8. Put in the amount of the health insurance for yourself, excluding children.
 - 9. We may have to make adjustments to income taxes and FICA for single or head of household status. We will do this with you.

AVERAGE MONTHLY EXPENSES

1. **Gather the following before you begin for the last 12 months.** Put these in a folder labeled, "Expenses." If you are able, you can make sub-folders for each item, such as car insurance, health insurance, and life insurance. If you do not have any of these, please obtain them from the bank and the companies. If you have difficulty, contact us immediately and we will determine what help you need and how to help you.

- a. Checkbook register.
- b. Bank statements and cancelled checks for all accounts.
- c. Charge account statements and receipts.
- d. Household bills statements and receipts.
- e. Insurance statements for all insurance: health, life, and car.

2. **Obtain information you do not have.** If you do not have readily available information, such as car, health and life insurance, taxes, replacement values, etc., please take the time to call and obtain estimates based on your being alone or with your children, if applicable to your case. Keep track of who you spoke to, when, and what information was provided. If the item is an estimate, note in the margin that it is an estimate, and put the basis for the estimate. Do not guess.

The most important thing to remember is that the financial affidavit must be ACCURATE to your current circumstances. In the event you contemplate changing your place of residence, your employment or other living arrangements, estimate the expenses you will have after the change. If information is important regarding past circumstances or future circumstances, note those items in the margin. We can consider making two or three columns to show changes in item.

3. **Spreadsheet the expenses.** If you are computer literate, use Quicken or a similar program. If you are not, make your own spreadsheet. List the immediately preceding 12 months across the top of a page in 12 columns. Make a thirteenth column for totals. On the left side, list the expenses in the same order as in the financial affidavit form. Fill in the numbers. This will give you yearly totals for each expense item.

Some items may not be able to be determined using a spreadsheet using actual bills and statements. If not, disclose by footnote how you determined the amount.

4. **How to insert in financial affidavit.** The figures to be inserted in the expense columns should be calculated on a monthly basis. Some of the time it may be easier for you to determine an item on a weekly basis; therefore, simply indicate that the amount inserted is weekly, and we will do the balance of the calculations.

IF YOU CALCULATE THE AMOUNTS ON A WEEKLY BASIS, PLEASE REMEMBER THAT THERE ARE FOUR AND ONE-THIRD WEEKS IN A MONTH.

COMPARE AVERAGE MONTHLY NET INCOME TO AVERAGE MONTHLY EXPENSES

5. **See if there is a monthly excess amount or a monthly deficit.** If there is a monthly deficit, it is most important to disclose how that deficit is funded, for example, spouse's income,

gifts, or credit cards. Compare the credit card amount owed to see if the deficit times twelve matches what is owed. If you are using the spouse's income, compare both financial affidavits' expenses to eliminate duplicate expenses, and see if combined incomes match combined expenses. Note the disclosure in a footnote or in a margin.

6. Why is this important? This comparison is a check of the accuracy of your financial affidavit. If you, for example, show average monthly expenses that exceed your average monthly net income by \$1000 a month and you do not owe any monies to credit cards, then it might be explained by either the expenses are wrong or the income is wrong. You may be funding the expenses with income that "is not visible." If there is cash income, let us know immediately. This may impact on more than just your dissolution of marriage case. Also, the judge will want to know the reasons for the disparity.

MARITAL ASSETS AND LIABILITIES

1. Gather the following before you begin for the last 12 months. Put these in a folder labeled, "Marital Assets and Liabilities." If you are able, you can make sub-folders for each item, such as checking accounts, savings accounts, brokerage accounts. If you do not have any of these, please obtain them from the bank and the companies. If you have difficulty, contact us immediately and we will determine what help you need and how to help you.

- A. All bank accounts statements, including checking and savings accounts.
- B. Brokerage account statements.
- C. IRA and pension statements.
- D. List of contents of safe deposit box(es).
- E. Cash value to life insurance statements.
- F. Car valuations (or Blue Book value calculations), car payment book.
- G. Appraisals or basis of value for real and personal property.
- H. Lists of contents of home(s), jewelry, boats, collectibles, antiques and values, with basis of value.
- A. Mortgage loan information and balances.
- B. Notes and loans payable.
- C. Credit card debt.
- D. Income taxes (payable, accrued, estimated).
- E. Life insurance policy loans.
- F. Family loans and expectation for repayment.
- G. Promissory notes.

2. Difference between marital and non-marital assets and liabilities; special equity. Put if the item is in joint name or in the sole name of you or your spouse, or in your name and your spouse's name with a third person. If an item was acquired in whole or in part prior to the marriage, note that in the margin, and put if marital monies went to maintain or upgrade this asset or liability. If you consider the asset or liability, your own or your spouse's own, and if you think you should have an interest in an asset in your spouse's name alone, put that in the margin, and note why. We will discuss this further together.

3. **Unknowns.** If you do not know the value of an asset or liability, list the item and indicate value as “unknown.” Do not guess. In our final draft, we may determine that an appraisal is necessary, and put “subject to appraisal.”
4. **Tax considerations.** We will review tax bases of assets, and tax impact on assets with a financial expert.

After completion of the draft of the affidavit, please contact our office for an appointment, if one is not already made, for the financial affidavit and disclosure to be reviewed, finalized for your signature, notarization and ready for exchange and filing.

Please feel free to contact our office if you have any questions.

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