

**DISTRICT COURT OF QUEENSLAND**

**PRACTICE DIRECTION NO 5 OF 2004**

---

APPLICATIONS FOR ADJUSTMENT OF PROPERTY INTERESTS –  
*PROPERTY LAW ACT 1974, PART 19*

---

1. Practice Direction 9 of 1999 is repealed.
2. Under Part 19 of the *Property Law Act 1974* (the Act) a de facto partner may apply to the court for an order adjusting interests in property of either or both of the de facto partners. The objects of this practice direction are to reduce cost and delay by:
  - a) making information available at the earliest practicable date so that a realistic assessment of prospects can be made by the parties;
  - b) encouraging the early consensual resolution of de facto property adjustment applications; and
  - c) minimising the number of appearances necessary to dispose of these applications.

**Commencement of property adjustment proceedings**

3. An originating application initiating a de facto property adjustment application will require attendance “*upon a date to be fixed by agreement or failing agreement after notice of not less than 14 days from one party to the other*” rather than by specifying a return date.

**Documents to be served with the originating application: applicant’s statement, supporting affidavit, draft directions order and contents of practice direction.**

4. At the time of service of the originating application, the applicant shall also serve:
  - a) a statement, which discloses the applicant’s financial resources , pursuant to section 289 of the Act, and contains a statement of facts, matters and circumstances (the applicant’s statement) ;
  - b) a supporting affidavit or affidavits;
  - c) a draft directions order;
  - d) a copy of this practice direction under cover of a letter addressed to the respondent specifically drawing that party’s attention to the provisions of paragraphs 8 to 11 inclusive of this practice direction.
5. The applicant’s statement shall contain the concise facts, matters and contentions upon which the applicant intends to rely in respect of:
  - a) the commencement, duration and termination of the de facto relationship;
  - b) the identity and value of the interest in property in respect of which an order is sought;
  - c) the property and financial resources of the parties at the time of the commencement, during and upon the termination of the de facto relationship;

- d) any disposal of property or change in property or financial resources which has occurred since termination of the de facto relationship;
  - e) any child support or order of the kind referred to in section 290 of the Act;
  - f) such of the matters for consideration specified in Sub-subdivision 3 of Subdivision 2 of Division 4 of the Act and the additional matters for consideration specified in Sub-subdivision 4 as are relevant in the circumstances;
  - g) any other fact or circumstance which ought to be taken into account pursuant to section 309 of the Act.
  - h) any other fact, matter or contention upon which reliance is to be placed.
6. The applicant's supporting affidavit shall:
- a) provide details of the value of the interest in property in respect of which an order is sought showing such the matter is within the monetary jurisdiction of the District Court under section 68(1) of the *District Court of Queensland Act 1967*, unless a document has been filed under s 72 of the *District Court of Queensland Act 1967*, and
  - b) contain evidence of the facts and matters otherwise pleaded in the applicant's statement.
7. The draft directions order shall be in the form set out in the schedule to this direction, with appropriate and necessary variations, and shall:
- a) contain a dispute resolution plan designed to exhaust the prospects of consensual resolution. This will:
    - (i) specify what, if anything, has been done to bring about a consensual resolution;
    - (ii) specify a timetable and steps towards an early and inexpensive resolution in terms of:
      - 1) discussions between the parties' representatives;
      - 2) defining of issues;
      - 3) exchanges of information and any disclosure necessary to enable the issues to be properly evaluated;
    - (iii) contain directions about the submission of any continuing conflict to an ADR process such as mediation or case appraisal as agreed between the parties or as may be ordered by the court;
  - b) provide for the undertaking of any other interlocutory steps, prior to the filing of a request for trial date, including the completion of disclosure and the service of any further affidavit material;
  - c) contain a provision for liberty to apply; and
  - d) be signed by the applicant or the applicant's solicitors.

### **Response by the respondent to the draft directions order**

8. Within 21 days of service of the originating application, and the documents served with the originating application pursuant to paragraph 4 of this practice direction, the respondent shall either:
- a) sign and return the draft directions order to the applicant or the applicant's solicitors; or
  - b) advise, in writing, the applicant or the applicant's solicitors of any matter in the draft directions order with which the respondent disagrees and of the respondent's alternative proposal in respect of that or those matters.

9. If the respondent or the respondent's solicitors have signed and returned the draft directions order then the applicant shall, within seven days of receipt of the signed draft directions order from the respondent, file it in the Registry and it shall be operative from that date.
10. In the event of disagreement as to the terms of the draft directions order:
  - a) the parties shall use their best endeavours to resolve that disagreement and agree to the terms of the order as quickly as possible; and
  - b) if, but only if, the parties are unable to agree the terms of the directions order, either party may list the originating application before the Applications Judge upon not less than 14 days' notice to the other party.
11. Any variation of an order once made may be sought under the liberty to apply provisions of the directions order deliver.

### **The respondent's statement and affidavit**

12. The respondent shall deliver to the applicant at the time provided in the directions order, the respondent's statement and the respondent's affidavit/s -
  - a) the respondent's statement shall disclose the respondent's financial circumstances, pursuant to s 289 of the Act and contain a statement of facts, matters and contentions as to the matters specified in paragraph 5 of this practice direction;
  - b) the respondent's affidavit/s shall:
    - (i) provide details of the value of the interest in property in respect of which an order is sought showing the matter is within the monetary jurisdiction of the District Court under section 68(1) of the *District Court of Queensland Act 1967*, unless a document has been filed under s 72 of the *District Court of Queensland Act 1967*, and
    - (ii) contain evidence of the facts and matters otherwise pleaded in the respondent's statement, save to the extent that the statement consists of admissions.
13. When the proceeding is ready for trial, a request for trial date should be signed and filed as if the proceeding were started by claim.

### **Proceedings started by claim**

14. When an application for defacto property adjustment is made in proceedings commenced by claim: an application for directions is to be filed and served by the plaintiff forthwith upon the close of pleadings.

**Chief Judge PM Wolfe  
8 November 2004**

## SCHEDULE

### DIRECTIONS ORDER

1. On or before the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ the applicant shall file and serve upon the respondent any further affidavits upon which the applicant intends to rely.
2. On or before the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ the respondent shall file and serve the respondent's statement and affidavit material in accordance with paragraph 12 of Practice Direction \_\_\_\_\_ of 2004
3. On or before the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ the applicant file and serve upon the respondent a statement (if any) and affidavits (if any) in reply to the respondent's statement and affidavit material.
4. Chapter 7 of the *Uniform Civil Procedure Rules* is to apply to the proceeding and the parties are to complete disclosure by **(insert method of disclosure, e.g. whether by delivery of list of documents and copies or by inspection).**
5. (a) the parties shall undertake the following dispute resolution plan:  
**(insert particulars of plan as per paragraph 7(a) of the practice direction)**

(b) in the event the matter is not resolved pursuant to the dispute resolution plan, the parties shall undertake an ADR process, namely  
**(insert particulars of proposed ADR process)**
6. Upon compliance with all preceding requirements and the filing of a request for trial date signed by or on behalf of each of the parties, the matter be placed on the callover list.
7. The costs of and incidental to the application and the order are reserved to the trial judge, or further order.

Solicitors for the Applicant

Solicitors for the Respondent

Date:

Date: