



Reading time only 8 minutes

TURNBULL HILL LAWYERS

YOUR AFFIDAVIT

This document is a general summary of contested estate legislation in NSW. Please read it carefully.

What is an Affidavit?

An affidavit is a sworn written statement that sets out the facts of your matter. Affidavits are used to provide your evidence to the Court, or in the case of a witness, the evidence of what they know.



Why do I need to make an affidavit?

An affidavit is used to state your case and provides your sworn evidence 'on the record'. There may not be an opportunity for you to give oral evidence, so it is important that your affidavit addresses all of the issues you wish to raise, and also all of the issues that the Court will look at when deciding your case. Often, your affidavit will be the most important part of your claim.

In family provisions claims, you cannot make a successful application without making an affidavit that sets out your relationship with the deceased person, and your personal and financial circumstances. A Court must have evidence of these and other matters, before they can apply the law to your situation and make an award in your favour.

The Court does not know you or your circumstances. Your affidavit is your opportunity to tell the Court your story.

What do I need to put in my affidavit?

As an affidavit is your way of telling your story to the Court, it needs to include all of the details relevant to your case. This includes your personal history, your relationship with the deceased person, your past and present financial circumstances and that of your husband/wife/partner (if you have one), and all of the other factors the Court must consider. It is important to have an affidavit that is clear, concise and accurately sets out your position.

You need to put your version of events forward as accurately and as truthfully as possible. You should only include details that you recall, not details that somebody else has recalled and told you about. There are consequences for misleading or leaving out important information.

You are under a duty to provide 'full and frank disclosure' to the Court of your financial position (and that of your husband/wife/partner). You can do this effectively by annexing or attaching confirmation of your evidence. By annexing copies of your recent tax returns and assessments, recent payslips or Centrelink statements, recent bank or loan statements, and any other documents that support your evidence, you can give your evidence more weight. This helps give your affidavit a 'ring of sincerity'.

You will be making statements of fact in your affidavit, so it is important that you only give evidence that you yourself are aware of. You may have heard of the expression 'hearsay' before. Hearsay is where you refer to a fact that is based on information that has been received from another person. You should avoid this wherever possible and only state what you know is true yourself.

How to prepare a good affidavit?

A good affidavit is one that meets all of the formal requirements of the Court, and one that accurately addresses all of the issues. It should only be long enough to provide relevant evidence and to support your claim.

These are some tips for ensuring that you provide us with the best instructions that you can. They help us prepare a good affidavit for you:

- Explain the source of your knowledge - tell us how you know certain things, for example what you saw, heard, observed or read
- Detail when something happened - be as specific as you can, but we understand that times and dates can be a difficult thing to remember
- Detail your evidence chronologically - it may help you to go through blocks of time or from one birthday to the next to ensure that you remember and describe all of the relevant information
- Only give your evidence - you can tell us when you think that someone else may be able to provide other relevant evidence
- Keep your evidence clear and concise - explain your evidence but keep it to the point
- Don't include opinions about things - stick to the facts
- Wherever possible, put any conversations that are relevant in direct speech - for example; I said to Mum words like, "..."

Using words like 'always' and phrases like 'every time' are generally not a good idea - be accurate in when and how things happened, or use words like 'often' or 'on most occasions' if you can't remember exactly when things happened.

An affidavit can be made at various times before or during Court proceedings. In family provisions or contested estates matters, your principal affidavit should be ready when you commence the Court proceedings. It may be necessary for further affidavits to be made at later stages in the proceedings. Sometimes, an affidavit will be required to reply to an affidavit that someone else

has made if there is a need to address any issues that they have raised.

To start an affidavit, we will initially send you a questionnaire to fill in which will give us a starting point. The more detail you provide in the questionnaire, the more detail we can put into your first draft affidavit. Often, it is necessary for a few drafts to be prepared to ensure that all of your evidence is presented properly and addresses all of the issues. We may send you draft affidavits with blank areas, 'X's or questions in them which will indicate where further information is required from you.



The quicker you finalise your affidavit and supporting evidence, the sooner it can be served on the other parties in the proceedings. The faster this happens, the quicker your matter may be finalised.

Common Questions

What if I can't remember what was said? It all happened so long ago!

We understand that sometimes it can be difficult to remember exactly what was said when you were a child or if a conversation happened many years ago. We don't expect you to remember everything, but we are obliged to ask you in case you do remember what was said. If you can't remember, then it is ok to say something like, "I cannot recall exactly what was said". If you can remember what the conversation was about, you can say something like, "I don't remember the exact words used, but we had a conversation about...". It is important that you try to put any conversations into direct speech, which is like script form, for example, I said "...", they said "...".

Why do I need to tell anyone about my financial position?

Your financial position is a factor that the Court will consider. If you owned multiple investment properties, had large savings and were generally well off, you may struggle to demonstrate that you have a need for provision from the estate. The Court needs your evidence before it can properly consider your claim whether you are well off, or not so well off.

Why do I have to provide financial details of my husband/wife/partner?

For similar reasons as those described above, you must also disclose the financial circumstances of your husband/wife/partner/co-dependent. The court requires these details as the financial circumstances of your husband/wife/partner impact on your current and future financial situation.

Why do you keep asking me the same question?

Sometimes, we need to ask a question of you in a different way to ensure that all the evidence to support your claim is provided to the Court. It is our responsibility to you to ensure that your best interests are represented. We can only do this sometimes by asking further questions of you. If we have asked you exactly the same question before, it is usually quicker and easier if you can provide us with your answer again so that we can ensure that your evidence is complete.

What is a sworn document?

A sworn document is something that you sign under oath. The oath or affirmation is that you have read the document and swear that everything in it is true and correct. Penalties can apply if a false document is sworn. A solicitor or a justice of the peace will ask you to swear that the contents are true before they can witness you swear and sign the document.

An affidavit is a sworn document that has particular formal requirements, such as the date needs to be entered on the front page on the day that the affidavit is sworn, and every page of the affidavit must be signed by the person swearing the document and their witness. Annexure documents only need to be signed by the witness.

OUR TEAM



Warwick Gilbertson
Partner

E: wgilbertson@turnbullhill.com.au



Adrian Corbould
Lawyer

Accredited Specialist

E: acorbould@turnbullhill.com.au



Mary Windeyer
Lawyer

E: mwindeyer@turnbullhill.com.au



Justine Aubin
Lawyer

E: jaubin@turnbullhill.com.au



Kaylyn Lyle
Paralegal

E: klyle@turnbullhill.com.au



Amy Warden
Secretary

E: awarden@turnbullhill.com.au