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Financial Affidavits

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Financial Affidavits

What is it?

What is a financial affidavit and how is it used in a divorce context?

When divorce proceedings are commenced, each spouse is required to fill out a financial affidavit. This form, which becomes part of the court record, shows income from all sources, debt (or liabilities), living expenses, and assets. Each party swears (under the pains and penalties of perjury) that the information contained on his or her affidavit is true. A judge will use the information contained in this affidavit when he or she issues temporary orders regarding separate maintenance (temporary alimony), child support, and other financial matters during the period of separation. The document is useful to attorneys, as it becomes the basis for seeking (or arguing against) temporary support and assists the attorney later during the discovery and property settlement phases of divorce.

What can happen if you underreport your income or exaggerate your expenses?

Because you sign the financial affidavit under oath, deliberately falsifying your financial information can be considered perjury. Additionally, if your divorce ends up in trial, your credibility as a witness will be seriously undermined if your spouse's attorney can prove that you lied in your affidavit. This, of course, may sway the court's sympathy toward your spouse. And finally, even if your case never makes it to trial, your spouse may be able to force a property settlement in his or her favor if you gave false information in a court document.

Example(s): Frank handled the finances in his family and secretly stashed away \$50,000 in a bank account during the last years of his marriage. When divorce proceedings began, he wire-transferred the money to his mother, a resident of Colombia. Frank's wife Liz learned of the money when she found a receipt for the wire transfer in her husband's coat pocket. Since Frank had not disclosed the existence of this money at discovery or in his financial affidavit (submitted to the court), Liz was able to use this fraudulent transfer to force a favorable property settlement.

It's not uncommon for spouses to be less than truthful when completing their financial statements. If you suspect that your spouse has not disclosed some assets, there are a number of places where you (or your attorney) can look for these hidden assets. The following documents should be scrutinized:

- Personal income tax returns
- Partnership and corporate tax returns
- Pay stubs
- Savings account passbooks and statements
- Canceled checks, check registers, and bank statements
- Securities and mutual fund statements
- Children's bank accounts
- Life insurance contracts

However, it's often the case (with married couples) that one spouse handles the bills and other financial affairs for the sake of convenience. The other spouse may or may not be well informed. Therefore, it may be difficult for a spouse to determine if the other party is being truthful in the affidavit. Fortunately, you and your attorney will have many other opportunities to engage in fact-finding.

What are some of the more common mistakes people make when completing financial affidavits?

Sometimes hidden assets aren't the problem; frequently, people unintentionally underestimate their expenses. For instance, if you note your monthly grocery bill as under \$150, you're spending less money than most people, given that approximately \$200 is typical for one person. And if you get a haircut every six weeks or so, be sure to include the cost under miscellaneous or personal care.

Under the heading, "Health Insurance," many mistakes are also made. Often, the wife will put nothing in this expense category because she isn't currently making an insurance payment. If you're going to be taken off your husband's plan shortly, you can call the benefits department of his employer to find out how much the COBRA payment will be. For more information about health insurance and COBRA, see our separate topic discussion, Divorce and Risk Management.

Under the "Miscellaneous" section of the affidavit, don't forget to include gifts (Christmas, birthday, wedding), newspaper and magazine subscriptions, cable TV, pet food and pet care, lawn service, and the like. But don't exaggerate your expenses, either. During a deposition or at trial, you'll have to defend your figures.

What information must you provide in your affidavit?

You'll probably be asked about the following:

- Name and address
- Occupation and job title
- Employer's name and address
- Frequency of your paychecks (i.e., weekly, biweekly, monthly, etc.)
- Monthly gross pay
- Type and amount of monthly payroll deductions
- Net monthly take-home pay
- Other sources (and amounts) of income
- Net monthly income from other sources
- Monthly housing expenses
- Monthly utility expenses (gas, electric, telephone, water and sewer, trash)
- Monthly grocery bill
- Monthly restaurant and entertaining expenses
- Monthly out-of-pocket medical expenses (doctor, dentist, prescriptions)
- Monthly insurance expenses (life, health, disability, homeowners)
- Monthly transportation expenses (fuel, repair and maintenance, insurance, parking)
- Monthly clothing expenses
- Monthly child-care (and child-related) expenses
- Monthly personal care and toiletries

- Educational expenses
- Miscellaneous expenses
- Debts of all kinds, including car loans, mortgages, 401(k) loans, student loans, etc. (monthly payment, unpaid balance)

Because divorce is based on state law rather than federal law, each state will have its own requirements regarding the financial statement. Nevertheless, the above-listed information is fairly typical. For additional information, contact a divorce attorney.



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