

RESOLUTION 09-05-2015

DIGEST

Family Law: Preliminary Declarations of Disclosure of Schedule of Assets and Debts
Amends Family Code section 2104 to require that a Preliminary Declaration of Disclosure of Schedules of Assets and Debts must have all categories completed in the California Judicial Council form.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend California Family Code section 2104 to read as follows:

§2104

1 (a) Except by court order for good cause, as provided in Section 2107, in the time period
2 set forth in subdivision (f), each party shall serve on the other party a preliminary declaration of
3 disclosure, executed under penalty of perjury on a form prescribed by the Judicial Council. The
4 commission of perjury on the preliminary declaration of disclosure may be grounds for setting
5 aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing with
6 Section 2120), in addition to any and all other remedies, civil or criminal, that otherwise are
7 available under law for the commission of perjury. The preliminary declaration of disclosure
8 shall include all tax returns filed by the declarant within the two years prior to the date that the
9 party served the declaration.

10 (b) The preliminary declaration of disclosure shall not be filed with the court, except on
11 court order. However, the parties shall file proof of service of the preliminary declaration of
12 disclosure with the court.

13 (c) The preliminary declaration of disclosure shall set forth with sufficient particularity,
14 that a person of reasonable and ordinary intelligence can ascertain, all of the following:

15 (d) The identity of all assets in which the declarant has or may have an interest and all
16 liabilities for which the declarant is or may be liable, regardless of the characterization of the
17 asset or liability as community, quasi-community, or separate.

18 (e) The declarant's percentage of ownership in each asset and percentage of obligation for
19 each liability where property is not solely owned by one or both of the parties. The preliminary
20 declaration may also set forth the declarant's characterization of each asset or liability.

21 (d) A declarant may amend his or her preliminary declaration of disclosure without leave
22 of the court. Proof of service of any amendment shall be filed with the court.

23 (e) Along with the preliminary declaration of disclosure, each party shall provide the
24 other party with a completed income and expense declaration unless an income and expense
25 declaration has already been provided and is current and valid.

26 (f) The petitioner shall serve the other party with the preliminary declaration of disclosure
27 either concurrently with the petition for dissolution, or within 60 days of filing the petition. The
28 respondent shall serve the other party with the preliminary declaration of disclosure either
29 concurrently with the response to the petition, or within 60 days of filing the response. The time
30 periods specified in this subdivision may be extended by written agreement of the parties or by
31 court order.

32 (g) A preliminary declaration of disclosure shall not be deemed to be properly completed
33 unless each and every box on the Scheduled of Assets and Debts is filled in.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: The Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Current law makes mandatory in all Divorce and Legal Separation proceedings, the exchange of Preliminary Declarations of Disclosures. (“PDDs”). Among the required documents that must be exchanged within such PDDs are forms entitled “Schedule of Assets and Debts.” This form has various categories for each type of property that a person can own. By way of example, categories include but are not limited to “real property” “checking accounts” “retirement accounts,” etc. The purpose of the form is to ensure that when getting divorced, a spouse discloses to the other spouse all of the assets that he/she owns. Other information, such as the date the asset was acquired, the value of the asset and the spouse’s alleged characterization of the asset (community or separate or mixed) must also be provided. Despite the various categories which are pre-printed on the form, many practitioners tend to leave certain categories blank. This is either because they think that if there is no real property, for example, that the category does not need to have the word “none” or the figure “0” inserted. However, some practitioners and/or self-represented spouses may leave a blank in the form for the specific purpose of avoiding having to disclose a hidden asset that they do not want the other spouse to become aware of. As a result of this latter possibility, practitioners who receive such Schedules with blanks on them, must of necessity contact the attorney (or self-represented Party) who prepared the Schedule and request a new one with the form to be fully completed. This becomes a burdensome task which should not have to be undertaken. And, on occasion, certain practitioners(or self-represented Parties) actually refuse to remedy this defect and refuse to provide revised fully completed forms.

The Solution: The proposed revision to the current statute would address this problem by specifically providing that in order to be in compliance with the law which requires that Preliminary Declarations of Disclosure be exchanged, that each and every form must be fully completed and filled out in all particulars. This will eliminate the need in most cases to protracted correspondence or even court hearings on this issue.

IMPACT STATEMENT

The proposed Resolution does not affect any other law, statute or Rule.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

AUTHOR AND/OR PERMANENT CONTACT: Avery M. Cooper, Esq., Cooper-Gordon LLP, 2530 Wilshire Blvd., Third Floor, Santa Monica, CA. 90403, 310-829-9918, averyc@cooper-gordon.com

RESPONSIBLE FLOOR DELEGATE: Avery M. Cooper, Esq.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Family Code section 2104 to require that a Preliminary Declaration of Disclosure of Schedules of Assets and Debts have all categories completed in the California Judicial Council form. This resolution should be approved in principle because it will more readily clarify whether or not a party to a divorce or separation has disclosable assets and debts and provide a methodical checklist for the disclosing party.

Family Code section 2104 requires parties to a dissolution, legal separation, or nullity action to file a "Preliminary Declaration of Disclosure," (California Judicial Council Form FL-140), which identifies "with sufficient particularity, that a person of reasonable and ordinary intelligence can ascertain" a person's assets, liabilities, percentage of ownership or obligation for each liability, a completed income and expense declaration, and all tax returns within the two years prior to the date the party served the declaration. (Fam. Code, § 2104.) The declarant is required to sign the forms under penalty of perjury that the information provided is true and correct. These forms are not filed with the trial court, but the party filing the declaration must file the proof of service of the Preliminary Declaration of Disclosure with the court.

The Schedules of Assets and Debts, California Judicial Council Form FL-142, requires disclosures of assets and debts in the following categories: (1) real estate; (2) household furniture, furnishings, appliances; (3) jewelry, antiques, art, coin collections, etc.; (4) vehicles, boats, trailers; (5) savings accounts; (6) checking accounts; (7) credit union, other deposit accounts; (8) cash; (9) tax refund; (10) life insurance with cash surrender or loan value; (11) stocks, bonds, secured notes, mutual funds; (12) retirement and pensions; (13) profit-sharing, annuities, IRAs, deferred compensation; (14) accounts receivable and unsecured notes; (15) partnerships and other business interests; (16) other assets. (Cal. Jud.Council, Form FL-142). The form requests the party to identify whether the item is separate property, the date acquired, the current gross fair market value, and the amount of money owed or encumbrance. (Id.). If a category is left blank, it is unclear whether the declarant mistakenly omitted the category, does not have assets or liabilities corresponding to the category, or is intentionally omitting the category. A complete and accurate PDD is also important because the final disclosures may be waived. Requiring the declarant to specifically identify whether he or she has assets and/or liabilities corresponding to each category will eliminate the problem.

SECTION COMMENTS TO RESOLUTION 09-05-2015

FAMILY LAW SECTION OF THE STATE BAR OF CALIFORNIA

Disapprove

Rationale:

The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) feels this Resolution would only increase litigation a) if the boxes were not checked, and b) more importantly, for requests to set aside judgments based on that failure. Remedies already exist to address a party's failure to list an asset or debt on the disclosure so this is unnecessary.

Disclaimer:

This position is only that of the FAMILY LAW SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California.

Membership in the FAMILY LAW SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.