

COURT PROCESS AND DOCUMENT DISCLOSURE

When dealing with solicitors and applying acts and statutes with regards to document disclosure, the strongest approach is not to frame it as a *“notice compelling disclosure”* as only the court can compel disclosure, but rather as a *“Notice Seeking Directions and Specific Disclosure”*, drafted in a way that assists the judge by identifying the legal basis upon which the order is sought.

The template below is designed to be sent to a solicitor in reference to an application notice, attached to witness evidence, or adapted into a draft order.

It focuses on the fact that the solicitor is relying upon alleged judicial instruments affecting property rights whilst refusing to disclose them.

Notice Template:

To: [Solicitor’s Name]

We hereby give notice that we are seeking directions from the Court requiring disclosure and inspection of the documents relied upon by you and/or your client in support of assertions made concerning the existence of judicial instruments affecting our rights and interests in the property known as:

[Property Address]

This also includes, but is not limited to, any application made to HM Land Registry.

You have asserted that a judicial instruments and/or enforcement documents exist which entitle your client to seek enforcement action and/or registration against the above property.

Despite requests for clarification, you have refused to provide copies of those documents or sufficient particulars to enable their existence, validity and scope to be verified.

The documents sought include, but are not limited to:

- any judgment relied upon
- any interim charging order
- any final charging order
- any order for sale
- any warrant or writ
- any application notice
- any witness statement or affidavit relied upon
- any certificate, notice or schedule lodged in support of enforcement
- any Land Registry application and supporting documentation
- any other judicial instrument said to confer authority to act against the property

The documents requested are central to the issues before the Court because they constitute the foundation of the assertions being made against us and our property.

Where CPR Part 31 applies:

CPR 31.6(a) provides that a party giving standard disclosure must disclose: “the documents on which he relies”.

Any judgment, charging order, warrant, writ, judicial instrument or supporting evidence relied upon by the opposing party falls squarely within this category.

Further, CPR 31.14 provides: “A party may inspect a document mentioned in [statement of case]”.

Accordingly, to the extent that any such documents have been referred to in pleadings, witness evidence or affidavits, inspection and copies should be provided.

If disclosure has been refused, the Court is invited to exercise its powers under CPR 31.12 and order specific disclosure and/or specific inspection of the documents identified above.

Professional Obligations

The refusal to identify or disclose the documents relied upon is also relevant to the Court’s consideration of fairness and case management.

Solicitors are subject to the Solicitors Regulation Authority Standards and Regulations and are required to comply with the SRA Principles and Code of Conduct.

In particular:

- Paragraph 1.2 requires that solicitors do not take unfair advantage of others.
- Paragraph 1.4 provides: “You do not mislead or attempt to mislead your clients, the court or others, either by your own acts or omissions or allowing or being complicit in the acts or omissions of others”.
- Paragraph 2.4 requires that solicitors only make assertions or submissions which are legally arguable.

If a solicitor asserts the existence of judicial instruments whilst refusing to identify their court of origin, reference number, date, terms, or to provide copies when requested, such conduct is capable of undermining the transparency required for the just disposal of proceedings.

The Court is respectfully invited to order that the Claimant/Applicant and/or its solicitors of the following as the relief sought by the Defendant:

1. Provide copies of all judgments, charging orders, warrants, writs, court orders and other judicial instruments relied upon.
2. Provide copies of all witness statements, affidavits, application notices and supporting documents relied upon.
3. Identify:
 - the issuing court
 - the claim number or case number
 - the date of issue
 - the parties to the proceedings
 - the amount allegedly secured or enforceable
4. Permit inspection of such documents within such period as the Court considers appropriate.

5. Confirm whether any application has been made to HM Land Registry and provide copies of all documents lodged in support of that application.
6. Direct that, in the absence of compliance, the party relying upon such documents be prohibited from relying upon them at trial or at any further hearing.
7. Make such further directions as are necessary to further the overriding objective and ensure that the proceedings are dealt with justly and fairly.

For the avoidance of doubt, this Notice does not constitute an admission that any debt, judgment, charging order, warrant, writ or other liability exists or is enforceable.

It is a request for the disclosure of the documents said to found the opposing party's case so that the issues in dispute may be properly understood and determined by the Court.