
[Litigation Solicitor London](#) On Are Litigation Funding Agreements Discoverable?

Just as any other type of contract, a litigation funding agreement must be discovered. A clause in a funding agreement is discoverable in that it will be a contract for an amount of money or services that the funding entity expects to receive from a litigant who is represented by the funding agency. A document that requires a written discovery process should include a clause that informs the litigant that they have the right to have that document produced in discovery of that document becomes necessary during a trial.

Because a funding agreement can be discovered as part of a lawsuit or even before a lawsuit has been filed, that a document is considered to be a "disclosing" document. Disclosing documents require a party to a lawsuit to disclose to the opposing party any and all information that would prove admissible evidence at trial. At the same time, it also requires a party to the lawsuit to make their communications with a court admissible in that trial. One example of a disclosure that makes a communication a part of a lawsuit is the document itself.

For the funding agency, a litigant's discovery of a funding agreement that the litigant signs creates several problems. First, the funding agency that is represented by the litigant must provide all pertinent documents that might be discovered during the discovery as part of their discovery process. Second, the litigant who received funding is not required to provide this document to the funding agency.

Some litigants choose to have funding agreements disclosed, but no document actually presented during litigation. This is also considered to be a disclosure. Although the litigant is required to disclose this document to the funding agency, if they choose to withhold it during litigation, the funding agency can still obtain it through discovery.

The first question that most people ask when they are confronted with a funding agreement is: are litigation funding agreements discoverable? Unfortunately, there is not a clear answer to this question. However, many jurisdictions consider a funding agreement to be discoverable.

A funding agreement that is not discoverable, as a matter of practice, can still be introduced into litigation in one of two ways. The first way is for the litigant to present their funding agreement during litigation. If the litigant's funding agreement is presented in the trial, the funding agency is not required to share the document with the litigant.

The second way to introduce a funding agreement into litigation is for the litigant to make a request to the funding agency that provided them the funding. The funding agency will then be required to produce the document during discovery. In many cases, the funding agency will provide the litigant with an amount of money to repay a loan, or other expenses incurred in the litigation.

Because a funding agreement is a "disclosure" document, a litigant should expect that the funding agency will not provide a copy of the funding agreement with a funding agreement discovery request. This means that even if the funding agency cannot provide the litigant with a copy of the funding agreement through discovery, the litigant should be able to obtain a copy of the funding agreement via other discovery procedures. Such procedures may include the use of a discovery subpoena, or if the funding agency chooses to produce a document in response to a discovery request.

A litigant who discovers a funding agreement is discoverable will always be required to present the funding agreement during the litigation in which the funding agreement is being sought. Additionally, the litigant must respond to the funding agency's offer to compensate them for any costs that are incurred during litigation.

In many cases, a litigant is not required to respond to a funding agreement during litigation if the funding agency did not provide a copy of the funding agreement. If a litigant doesn't have to respond to a funding agreement request in the trial, then the litigant can obtain a copy of the funding agreement from the funding agency either through discovery or a discovery subpoena.

The biggest concern for a litigant who discovers a funding agreement is how the funding agency will make the funding agreement they produced part of the record during litigation. This is why a litigant should seek legal counsel in this situation. Unless a litigatory counsel provides a trial lawyer, the funding agency can prevent a litigant from receiving reimbursement for any costs associated with the litigation.

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