



FAMILY LAW FINANCIAL ISSUES

Following separation, there are usually many concerns about financial issues. This leaflet will help you understand the procedure, and you may wish to refer to it as your case progresses. Please do not hesitate to contact us at any time should you have any further queries.

Initial Steps

Generally, financial matters are resolved as the divorce progresses. However, on occasions emergency steps need to be taken to preserve assets or to protect your interest in the matrimonial home.

If at any stage in the proceedings you believe that the other party is dissipating assets, then we are entitled to apply to the Court for an "Avoidance of Disposition" order to prevent this taking place. It is however important that you notify your solicitor as soon as you believe this course of action is being adopted so that immediate action can be taken on your behalf.

If you are not the joint owner of the matrimonial home, it is possible to register your right of occupation and to avoid the other party from selling the property without your knowledge.

If you are a joint owner of the matrimonial home your legal right to the property is not affected by divorce/separation. It is however appropriate for you to consider severing the joint tenancy. This is a procedure which protects your half share of the property. Upon death, your half share of the property would then pass to your estate rather than by survivorship to the other party.

You should also consider making a Will. Once the decree absolute is granted, you lose your automatic entitlement to inherit property from your former spouse whether or not he/she has made a Will. You should also remember that, if you intend to re-marry, any Will you make before marriage will automatically be revoked on re-marriage.

You should consider severing all joint financial liabilities and accounts to make sure that you do not lose out or become liable for any further debts without your express consent.

If you are without monies then you are able on occasions to apply to the court for interim maintenance. An application for interim maintenance cannot be commenced earlier than the issue of the divorce petition but the maintenance Order can then be backdated to the date of the petition. The interim maintenance concludes generally when decree absolute of divorce is granted or the Order can be continued until such time as the court considers reasonable.

Ancillary Relief Proceedings

At the time of your separation, generally negotiations will take place to try and resolve all financial issues including the matrimonial home. It is of course preferable that your finances are resolved by way of an agreement rather than contested proceedings.

There is a facility for Mediation and this is a process where both yourself and your husband/wife attend before a trained mediator to try to resolve matters by agreement. You are of course still able to consult with your legal advisor before you make any final decisions. Should this course of action be appropriate, then we will explain how this operates, together with details of costs and relevant agencies who you can contact. This process is now mandatory before any court proceedings can be issued.

If an agreement in respect of financial matters cannot be resolved then the Court can make financial provision orders, and details of the range of orders available are as follows:-

1 Periodical Payments

Periodical payment Orders normally take the form of weekly or monthly maintenance amounts of which one party is ordered to pay to the other party (and any children of the family if the Child Support Agency provisions do not apply).

2 Secured Periodical Payments

The Court has the power to order that the obligations to make periodical payments to parties and children shall be secured. This means that the Court can require some capital asset belonging to the payer to be used as security for the payments. If the payer then defaults any income from the asset (e.g. dividends from shares) can be used to satisfy the Order. Alternatively the asset concerned can be sold and the proceeds used for the payment of maintenance. These Orders are however rarely made.

3 Lump Sum Orders

The Court can order either party to pay to the other or child of the family a lump sum. The amount of the lump sum payable is dependant upon the means of the parties. Lump sum Orders may be made for a variety of purposes. They can be ordered to be paid out of the proceeds of sale of the former matrimonial home or a division of capital between the parties. On occasions, the lump sum can be ordered to be paid by instalments.

4 Property Adjustment Orders

The court is able to make property adjustment Orders in favour of either party to the marriage and any children of the family. It can transfer the matrimonial home over to one party or for the property to be sold and provide how the proceeds are to be divided.

This is in fact an overview of the range of Orders available but we will advise you more specifically dependant upon your individual needs.

The Law Involved The Court Procedure

If it is necessary to issue a financial application then this normally takes place between pronouncement of decree nisi and decree absolute and after mediation has been attempted. The procedure adopted is as follows:-

- 1 An application is issued stating what Orders are required. The application is filed at court and is then sent to the other party.
- 2 The Court will make an Order which will include the date by which detailed financial statements (known as Forms E) are to be exchanged.
- 3 The solicitors will usually prepare other documents prior to the first court appointment summarising the case which will include:-
 - A chronology of the relevant events
 - A statement of the issues to be determined
 - A schedule of the income and assets
 - A schedule of the legal fees to date

These documents are an opportunity to positively present your case to the Court.

The First Appointment

At the First Appointment the District Judge at the County Court looks at the case generally with the objective of defining the issues and saving costs.

The District Judge:

- Determines the extent to which each questionnaire shall be answered and the documentary evidence which should be produced
- Gives directions as to valuations of assets such as a joint valuation of the property
- If the case is appropriate then the District Judge will refer the case to a Financial Dispute Resolution Appointment

The Financial Dispute Resolution Appointment

This is the second court hearing and enables the parties to negotiate and try to reach a settlement to avoid a lengthy and acrimonious final hearing. It is an attempt by all parties to use their best endeavours to reach an agreement on relevant matters and issues. The District Judge will give an indication of how the matter should be resolved but will then have no further involvement with the application if an agreement cannot be reached. If an agreement is reached, then a final court Order reflecting the agreement reached will be drawn up and approved by the District Judge.

The Final Hearing

If matters cannot be resolved by Financial Dispute Resolution, the matter will proceed to a final hearing where evidence will be called and the District Judge will make a final decision as to what should happen. Before the final hearing commences there is time provided to the parties to have one last attempt at a negotiated settlement.

Obviously your legal costs increase the longer your case proceeds through the Court. It is essential that you consider your costs whether privately funded or legally aided throughout.

Costs

A standard letter will be sent to you estimating the costs which may be incurred by you during the court process.

The Law Involved

We need to consider how a court would approach the matter and the factors to be considered are set out below.

The first consideration must of course be the welfare of any children of the family. The court will try to ensure that any children are adequately housed and have enough money to meet their needs. There are several other factors including:-

- The incomes and future earning capacities of both parties
- The financial resources of them both now and in the future including their housing needs
- The length of the relationship – the longer the relationship the stronger the presumption that equality is the starting point.
- The contributions made both in terms of money and care of the family (both now and in the future)
- Ages of both parties and their health
- Behaviour (in exceptional circumstances)

There is no mathematical equation and hence no incorrect solution. There are a range of Orders which the court can properly make which is why it can be difficult to predict the likely outcome, especially prior to the exchange of financial information.