

Financial Provision On Divorce

When a marriage breaks down there has to be a distribution of income and assets. This can be more complex where children are involved.

This guide is to give you an overview of what can be involved, what is required from you and how and why decisions are made.

Disclosure

For a proper assessment to be made there has to be mutual disclosure by both parties. This is usually done in Form E (A financial statement).

Within that document the following are required to be disclosed:-

- Your last 12 months bank statements for all accounts in your sole name or joint names.
- Property valuations obtained in the last 6 months
- Most recent mortgage statement
- Dividends if any.
- Shares or investments
- Surrender values of any insurance policies
- Last two years business accounts
- Any available documentation on the basis on which the value of any business is estimated.
- CEV (Cash Equivalent Value) of pension arrangements or in the case of additional State Pension valuation of rights
- Last three wage slips and most recent P60 and P11
- For self-employed or those in a partnership the last tax assessment or a letter from an Accountant in default.
- In the case of self-employed or a partnership the next 12 months estimated income if the next 12 months estimated income differs significantly from the last 12 months Management Account for the period since the last account.

Both parties are under a duty to be full and frank in their disclosure and it is only once all the financial information about income, assets and liabilities is available that proper legal advice can be given. The duty to provide full and frank disclosure is ongoing so if your circumstances change you have a duty to notify the other party. If there is a change or likely to be a change you should notify your solicitor first.

The Powers of the Court

It is important that you understand the options available to you before you decide on how to deal with the financial arrangements between you and your former spouse.

Spouses and former spouses have rights to make financial claims against each other by applying to the Court for orders for any or all of the following:

1. Maintenance for children by agreement only – see below.
2. Spousal Maintenance
3. Adjustment of property ownership (e.g. transfer of a house from joint ownership to the sole ownership of one spouse) sale of properties, transfer or sale of other assets such as shares and policies.
4. Lump sums (i.e. capital payments)
5. Pension sharing/attachment

The court has a very wide discretion as to what orders it can make when making a financial remedy order for divorcing couples. The court is obliged to consider whether it would be appropriate to achieve a clean break between the parties. A clean break order is one that achieves finality between the parties by dismissing all their claims and preventing future claims.

In most cases, the Courts no longer have power to make orders for child maintenance except by agreement. An application should be made to the Child Maintenance Service (CMS) formerly CSA.

What The Court Take Into Consideration

The court will take all circumstances of each case into account when determining financial provisions on divorce. There is no standard formula for calculating appropriate financial provision, instead, the court has a duty to consider a range of statutory factors set out in section 25 of the Matrimonial Causes Act 1973 (section 25 factors).

When considering the section 25 factors, different judges may be led to a range of possible solutions on identical facts, all of which would be within their judicial discretion.

The Section 25 factors are:-

- (a) The welfare of any child of the family under the age of 18 or in full time education or training.
- (b) The income, earning capacity, property and other financial resources which each spouse has or is likely to have in the foreseeable future including, in the case of earning capacity, any increase in that capacity which it would be, in the opinion of the Court, reasonable to expect a person to take steps to acquire.
- (c) The financial needs, obligations and responsibilities which each spouse has or is likely to have in the foreseeable future.
- (d) The standard of living enjoyed by the family before the breakdown of the marriage.
- (e) The ages of each spouse and the duration of the marriage.
- (f) Any physical or mental disability of either party.

- (g) The contributions which each spouse has made or is likely to make in the foreseeable future to the welfare of the family, including any contribution by looking after the home or caring for the family.
- (h) The conduct of each spouse, if that conduct is such that it would in the opinion of the Court be inequitable to disregard.
- (i) The value to each spouse of any benefit which one spouse because of the divorce will lose the chance of acquiring (most usually pension provision).

The aim of the court is to achieve fairness. Often a key factor is the reasonable needs of yourself and your spouse.

The starting point is that assets accrued during a marriage are divided equally and the guiding principles applied are "equal sharing", "needs" and "compensation".

Where equal division of resources adequately meets the parties' needs

Where an equal division of all assets accrued during the marriage adequately provides for the capital and income needs of each party and any children, then this is the appropriate financial outcome.

Where equal division of resources cannot meet the parties' needs

Where the needs of the parties and any children cannot be met by an equal division, an unequal division of resources may instead be appropriate. In these cases, needs are likely to dictate how capital and income are divided. Inherited assets, or assets introduced by one party during the marriage, may count for little. However, where possible, the court tries to ensure that a party who inherited or introduced a particular asset retains it as part of the resources to meet their own needs (even if this means allocating a larger share of the matrimonial assets to the other party).

In some cases, the sharing principle may be applied at a later date, with a reallocation of resources in the future (typically when one party has a deferred interest in the matrimonial home that will be realised once any children finish their education).

Where possible, the court seeks to achieve a clean break between parties on divorce. If there are insufficient assets to achieve this, one party (the payer) may pay ongoing maintenance to the other (the payee). This maintenance would cease when one of the following occurs:

- The payee remarries.
- The payee dies.
- The payer dies.
- It could also be changed or terminated by further order of the court.

Sometimes, the court will award maintenance for a fixed period of time. When deciding the level of maintenance to award, the court will consider all of the following:

- The needs specified by the payee in a budget.
- The standard of living during the marriage.
- The payer's ability to pay.

Where the parties' resources exceed their needs

Where the resources of the parties exceed their needs, the application of the sharing principle generally leads to an equal division of the assets that have been built up during the marriage. However, where significant matrimonial assets have been generated by the special contribution of one party (that is, by exceptional efforts that are greater than the contribution of the other), the court may provide the other party with a less than equal share to reflect this.

The sharing principle does not apply to property that is inherited or introduced by one party during the marriage, except if it has been matrimonialised. Some examples of matrimonialised property include it being put into joint names or converted into a different type of property enjoyed by the family (such as an inherited picture sold and used to buy a holiday home). However, where assets are entirely, or largely, non-matrimonial, the division of resources may be determined entirely by the claimant's needs. These needs are met in full and generously interpreted, and the provision may also include compensation for economic disadvantage (for example, because of giving up a career to look after children).

For further information please contact:

Victoria Melling
Partner & Head of Family

vmelling@kbl.co.uk

© 077