



BTMK

SOLICITORS LLP

FAMILY



FINANCIAL MATTERS

FOREWORD

This document is for your information and personal reference. We would suggest that you retain it for your records.

When parties divorce it is appropriate for the assets of the marriage to be redistributed. How they are distributed will depend upon the particular circumstances of your case and what assets are available for distribution.



Court Orders Which Are Available

Under the Matrimonial Causes Act 1973 the court can make a number of orders relating to matrimonial finances. These Orders are as follows:

1. Maintenance Pending Suit – this is an Order requiring one party to the marriage to pay monthly (or weekly) sums of money to the other party. Such an order is a temporary measure and will not continue after a final court order in relation to finances. It is intended to be used in circumstances where one party to the marriage has a greater income than the other and the party with the lesser income is encountering difficulties in meeting their outgoings.
2. Periodical Payments – this is an order requiring one party to the marriage to pay monies to the other party. This order may be subject to a time limitation, i.e. that payments will be made for a short period after which they will stop. In certain circumstances they can be for life. The recipient of the order will lose the benefit of the payments if they remarry. Sometimes it is appropriate to have an order for nominal periodical payments of £1.00 per year. Such order is intended to provide the recipient with the ability to bring the issue of maintenance back before the court for reassessment in the future should their financial circumstances change to their detriment. The amount payable under any periodical payments order can be altered by the court upon a further application after the order is made.
3. Secured Periodical Payments – this is an order protecting the payment of periodical payments (see above). There are two types of secured periodical payments:
 - (a) An asset which produces income, the income of which can be paid to the recipient.
 - (b) An asset which does not produce income - The court can require a party to the marriage to set aside that asset for the benefit of the recipient to ensure that in the event of non-payment of periodical payments the asset can be used to compensate the recipient for loss of payments.
4. Lump Sum Payment – this is the payment of a given sum of money from one spouse to the other.
5. A Property Adjustment Order – this is an order which deals with any property. Such orders can be obtained whether the property is jointly owned or owned by one spouse only. The types of orders available are as follows:
 - (b) A sale of the property. Such orders will also state how the net proceeds of sale should be distributed between spouses. The net proceeds of sale are the monies remaining from the sale price after payment of any mortgage and sale costs.
 - (b) An outright transfer of the property to one spouse – this will prevent the other spouse from having any rights over the property and will prevent them inheriting the property in the future.
 - (c) A transfer of the property subject to a legal charge in favour of the other party. Such orders are often made where the parties have children who need to be accommodated and there are insufficient assets to provide for both spouses and the children when the assets are distributed. The house will be transferred to the spouse with whom the children reside, thus the other spouse will lose the right to enter the property whenever they choose. The spouse accommodating the property will, however, have to pay to the other spouse a lump sum payment, the extent of which will be stipulated in a legal charge (usually expressed as a percentage interest in the net proceeds of sale of the property) which will be registered against the property. Payment of those monies will not happen until the first of several triggering events which are usually:
 - (i) the spouse in occupation remarrying
 - (ii) the spouse in occupation cohabiting for a period of at least 6 months
 - (iii) the voluntary vacation of the property by the spouse in occupation
 - (iv) the death of the spouse in occupation
 - (v) the youngest child of the family reaching 18 years or finishing full time education
6. Pension Adjustment Order – Often one spouse's pension may constitute a major asset of the marriage. The pension can be dealt with in three different ways, namely:
 - (a) Offsetting – the value of it can be offset against the value of other marital assets so that the person who has the pension will retain it but recover less from the other assets.
 - (b) Pension Attachment Order – this is where the pension fund remains in the name of the person who is entitled to it but when the pension becomes payable (usually at a given age or on retirement) the pension provider will pay part of the pension direct to the recipient spouse. The pension will have two elements, the lump sum payable on retirement and the monthly pension payments. The recipient spouse can have an order requiring payment of percentages of both elements. The payment of the monthly pension would, however, stop if the

recipient spouse remarried. The lump sum payment remains payable irrespective of whether the recipient spouse has remarried.

- (c) Pension Sharing Order – this is where the pension fund is simply split into two separate funds. The split will be according to a certain percentage and the person receiving the pension sharing will then be entitled to a pension in their own right and they are able to transfer the pension (subject to certain restrictions) into a pension fund of their own choosing.

Assets To Be Considered

Anything of any value owned by either party to a marriage can be taken into account to provide for the parties upon divorce. Such assets include any jointly owned assets and assets held jointly with a third party (not your spouse). Each asset will need to be valued in the most appropriate way for the individual asset, e.g. A property can be valued by an Estate Agent, an endowment policy can be valued by reference to either its surrender value or its sale value, etc.

Factors To Be Taken Into Consideration

The Matrimonial Causes Act 1973 states that when the court is considering making an Order relating to the finances of the marriage the court must take into consideration various factors, the first consideration being given to the welfare of any minor child of the family. The other factors which the court will consider are as follows:

1. The income, earning capacity, property and financial resources which each spouse has (or is likely to have in the near future) including any increase in earning capacity it would be reasonable for a spouse to take steps to acquire
2. The financial needs, obligations and responsibilities each spouse has or is likely to have in the near future
3. The standard of living enjoyed during the marriage
4. The age of each spouse and the length of the marriage
5. Any physical or mental disability of either spouse
6. The contributions which each spouse has made to the welfare of the family (including any contribution of looking after the family)
7. The conduct of each of the spouses, but only where the conduct is such that it would be unjust for the court to ignore it (in practice it is rare for conduct to be serious enough to be considered by the court in relation to the distribution of finances)
8. The value to each spouse of any benefit which, by reason of divorce, that spouse will lose the chance of acquiring

When considering how to distribute the capital assets of the marriage the general rule is that there should be a 50% split of said assets. The factors mentioned above will, however, determine whether one spouse should receive assets from the marriage worth considerably more than the other.

Disclosure Of Documents

In order for advice to be given as to the likely distribution of assets (should the matter proceed to a contested trial) it will be necessary for us to have full disclosure from both yourself and your spouse as to your financial positions. The cheapest and quickest way for financial matters to be concluded is by way of voluntary disclosure, i.e. both spouses providing valuations of all capital assets and details of income and outgoings, all supported by documentary evidence.


Financial Agreements

Once all of this information is available it is possible for us to advise you on an appropriate settlement of financial claims. Negotiations can be entered into until settlement is achieved. If agreement is reached then the terms of the agreement will be placed into a formal Court Order (a Consent Order) which will be signed by both spouses and then submitted to the court for approval by a Judge. The Judge cannot approve the terms of the Consent Order until after Decree Nisi (please see Divorce Leaflet) has been pronounced. Once approved the capital assets can be distributed in accordance with the terms of the Order.

Court Proceedings

If it is not possible to negotiate a settlement of financial matters or your spouse refuses to provide full and frank disclosure of their financial position it may be necessary to pursue financial claims through formal court proceedings. These proceedings are known as Ancillary Relief proceedings.

To commence proceedings it is necessary to submit to the court a Form A application form indicating which of the above orders are required. It is possible to apply for all types of order. The application must be accompanied by the requisite court fee.

 The court will timetable the application so that information is provided to the court so that negotiations can be entered into to try to settle the matter at any time during the proceedings, but also so that the information is such that a Judge can use it to, ultimately, decide how finances are to be dealt with. The court will order both spouses to prepare a Form E (financial statement). This is a lengthy document which details each spouse's financial position. You must personally swear to the truth of the document before it is sent to the court. A copy of the sworn Form E is exchanged (placed in the post at the same time) with your spouse's Form E.

Once there has been an exchange of Forms E, each spouse, prior to the first hearing, has the opportunity to raise questions in respect of the other spouse's financial situation. Such questions are prepared in a certain format and are known as Questionnaires.

The first hearing can be used in one of two ways, namely:

1. As a Directions Appointment – this is where the court indicates what further evidence it wishes each spouse to prepare. Such indications are known as “Directions”. If Questionnaires have been prepared then it is likely that the Directions of the court will be for each spouse to respond to the other's Questionnaire and for a further hearing to be scheduled. There may be other Directions ordered at this time. The next hearing will be a Financial Dispute Resolution Hearing (FDR).
2. As a Financial Dispute Resolution Hearing – if the spouses have each provided full and frank disclosure of their financial positions then the hearing can be used to try to negotiate a settlement of financial claims. If the hearing is used in this way then the District Judge will become actively involved in assisting the spouses to try to reach an agreement as to the distribution of the finances. If agreement is reached a Court Order will be made on that day representing the settlement. If agreement is not possible the court will make an order that the matter be determined by way of a contested final hearing. The same judge will not be further involved in your matter if the case is not concluded at the FDR hearing.

Following the First hearing, if that hearing has not been used as an FDR, then the next hearing will be an FDR. You are referred to the notes immediately above relating to using the first hearing as an FDR as to what will happen at the FDR Hearing.

Ultimately if agreement cannot be reached between spouses then a Judge will have to decide how the finances are to be distributed. This is done by way of a final contested hearing at which each spouse will have to give evidence to the court as to their respective positions. This will be done by way of questions being asked by each spouse's legal representative (usually a barrister). Questions will also be raised by the barrister representing the other spouse. The Judge will make a determination as to how the finances are to be distributed. A court order will be made on that day.

Bankruptcy

If you or your spouse are likely to be made bankrupt in the foreseeable future then this may affect the settlement reached and any orders made and so it is extremely important that you bring the possibility of bankruptcy to the attention of your solicitor. When a person is made bankrupt a Trustee in Bankruptcy is appointed in order to try and recoup the monies owed to the bankrupt's creditors. The Trustee in Bankruptcy has the power to try and claim against any asset that they believe the bankrupt had a financial interest in. In matrimonial proceedings this can include jointly held assets as well as assets held in either your sole name or your spouse's sole name. If the bankrupt does have a financial interest in an asset then the Trustee in Bankruptcy has a number of powers which include the ability to apply to force a sale of the matrimonial home. These powers can also last over a number of years and therefore bankruptcy can affect a settlement made some years previously. The Trustee in Bankruptcy can also, in certain circumstances, apply to set aside any transactions made within a certain time period if they suspect that the bankrupt is deliberately depriving themselves of assets or property in order to prevent the Trustee from claiming against those assets or property



FAMILY

Below is a list of all of our family services, if you would like a copy of any of these documents please contact us on 01702 339222

>> Children Matters

>> Divorce Information

>> Domestic Violence

>> Financial Matters

>> Children In Care

County Chambers
25-27 Weston Road, Southend On Sea
Essex SS1 1BB

Tel: 01702 339222

Chelmsford
61 New London Road Chelmsford
Essex CM2 0ND

Tel: 01245 496565

www.btmk.co.uk