

INFORMATION ON FINANCIAL SETTLEMENTS

1. FINANCIAL SIDE TO DIVORCE

This means deciding how to share the matrimonial assets and deciding where each party and the children (if any) will live.

The first step is for both parties to give full disclosure of their financial position. This is generally done by completing a Financial Settlement - Form E.

Financial disclosure includes the following:-

Assets

- (a) The value of the former matrimonial home, any other freehold or leasehold properties, time shares and mobile homes.
- (b) Bank accounts, savings accounts, Peps, Tassas, stocks and shares, endowment policies, insurance policies and the value of any personal items individually worth more than £500.
- (c) Pensions.
- (d) Business assets.

Income

- (a) Wage slips, P60's State Benefits e.g. Income Support, Tax Credits, Child Benefits.
- (b) Rental income.

Outgoings

Current outgoings and possibly future anticipated outgoings. These may be relevant in deciding whether spousal maintenance should be paid.

Court Procedure

- (a) Either party can file at Court a Notice of Intention to Proceed with an Application for Ancillary Relief in Form A.
- (b) Once the application is issued the Court will set a date for the First Appointment. This must be neither less than 12 weeks nor more than 16 weeks after the date of filing of the Notice.
- (c) Five weeks before the First Appointment the parties must exchange sworn Statements of their financial circumstances in Form E together with supporting documents. The Form E will require the financial disclosure set out above.
- (d) At the First Appointment the Judge will give Directions to bring the matter to the next stage, a Financial Dispute Resolution Appointment.
- (e) At the next hearing, the Financial Dispute Resolution Appointment the Court encourages the parties to negotiate and settle. If an acceptable settlement is brokered the Court may make

a Final Order. If no agreement is brokered the Court will set the matter down for a Final Hearing.

The likely cost of contested proceedings could be between £5000 and £10.000 plus VAT and disbursements and in complex high value cases the costs could exceed this.

Possible Final Court Orders relating to Finance

The terms of any financial settlement will vary depending on the circumstances but courts now are more likely to order an equal division of the matrimonial assets irrespective of whether there are children.

However the Court must take account of the following:

- the income earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
- the financial needs, obligations or responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- the standard of living enjoyed by the family before the breakdown of the marriage;
- the age of each party to the marriage and the duration of the marriage;
- the contribution that each of the parties has made or is likely in the foreseeable future to make to the welfare of the family;
- any physical or mental disability of either of the parties to the marriage; and
- rarely, the conduct of each of the parties during the marriage and/or the divorce proceedings.

VERY IMPORTANT

Despite the Decree Absolute in the divorce, until there is a further Final Court Order terminating each party's financial claims against the other for the future each party can always claim against the other UP UNTIL the time each party remarries. THEREFORE, DO NOT REMARRY without getting legal advice if you have a financial claim against your first husband or wife.

CLOSE JOINT BANK OR BUILDING SOCIETY ACCOUNTS IF YOU ARE CONCERNED YOUR HUSBAND OR WIFE WILL WITHDRAW ALL THE MONIES!

2. MATRIMONIAL HOME

Is it owned or tenanted in your joint names?

If yes, you have a right to live there up until this is changed. It can be changed by agreement or, by Court Order in the divorce proceedings.

THEREFORE, DO NOT MOVE OUT WITHOUT LEGAL ADVICE.

If it is owned in your joint names as "joint tenants" and you die before the divorce is finished?

The property would pass automatically to your husband or wife. If you want to change this let your solicitor know so they can do something about it. It is possible to sever the joint tenancy allowing each party to own separate shares in the property. You could then make a Will leaving your Estate including your interest in your home to whoever you want, for example to your children. We can help you to make a Will (see below). If you do not make a Will your estate will pass under the laws of intestacy. Under the Rules of Intestacy your husband/wife will receive personal chattels, that is your personal items such as cars, china, jewellery, furniture etc., and the first £125,000 free of tax from the estate, plus a life interest in the residue of the estate, that is what is left after

payment of debts, funeral expenses etc. It is therefore important that a Will is made at the same time as the tenancy is severed.

Severing the joint tenancy in this way is, however, something of a double-edged sword. At present, if your husband/wife is the first to die then the property would automatically pass to you as surviving joint tenant, whereas once the joint tenancy is severed, then his/her interest in the Will would pass to any beneficiaries he/she appointed under the terms of his/her Will.

Tenancy or property owned by only one of you.

Tell your solicitor. Your rights to live in the property will have to be protected by some notice to be given. Towards the conclusion of the divorce it may be necessary to protect your rights to remain living in the property because after the Decree Absolute you may lose your rights to remain living there.

3. MAINTENANCE/PERIODICAL PAYMENTS

Either spouse, that is husband or wife, may claim maintenance or financial help from the other depending on each party's financial circumstances. A Court Order can be obtained in the divorce proceedings and if necessary before all financial matters are finally resolved (maintenance pending suit).

4. WILL

Generally you should make a Will. A Will questionnaire is available. Cost £75 plus VAT for a single Will. If you have complex financial affairs then the cost would be more. We would discuss this with you when we take your instructions for your Will.

A Will is generally revoked by remarriage therefore upon remarriage you must consider whether or not you need to make a new Will.

5. CHILD SUPPORT

In most situations if not agreed between the parties Child Support will have to be dealt with by the Child Support Agency.

Since 3rd. March 2003 an absent parent is required to pay 15% of net income for one child, 20% of net income for two children and 25% of net income for three or more children. These amounts may be varied if the absent parent has one or more "relevant other children" for example, one or more children from another relationship.

The Child Maintenance and other Payments Act 2008 provides for an increased maintenance disregard for persons on benefits and the Child Maintenance and Enforcement Commission will have new methods of collection of child maintenance including deductions from an absent parent's bank account.

The Child Support Agency telephone helpline number is 0845 7133 133

You may also obtain information from your solicitors, the Citizens Advice Bureau or the Benefits Agency.

For further information on any of the above please contact the team on **01376 321311**.