

Briefing Note: Finance – Frequently Asked Questions

Introduction

On the breakdown of a marriage, there are a number of key issues to be considered, one of the most important of which relating to the financial consequences of the divorce/separation. You and your spouse will need to agree how to deal with, and achieve a fair division of the matrimonial assets and resources. This guide should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

1. Where do I start?

Before you see your solicitor, you should start collating information and documentation relevant to your finances. Within the legal process, that data is entered into a form prescribed by the Family Procedure Rules 2010, namely "Form E".

It is important that you and your spouse try to identify all relevant matrimonial assets and resources and agree the extent of same. To the Form E should be exhibited a number of documents including:-

- Property valuations;
- Pension valuations;
- Valuations of life policies;
- Bank/building society statements in respect of all accounts in which you have an interest (going back twelve months).

If at all possible you and your spouse should liaise over this process. Your solicitor will be able to provide you with Form E.

2. Am I safe in my house?

You may own your house jointly with another person (normally your spouse) or the matrimonial home could be in either your or your spouse's sole name.

It is important to identify the "Registered Proprietor" early on as there could be steps you will need to take to safeguard your position.

When property is held jointly with another person, this will either be as "joint tenants" or "tenants in common". If the former, in the event of your death, the property will pass automatically to the survivor irrespective of any contrary wish expressed in your will. If, however, you are one of two or more "tenants in common", in the same circumstances your proper share would be defined and pass under your will. We can establish how you hold the property by obtaining Official Copies of the relevant entries from the Land Registry.

If you are joint tenants (as most married couples are) you may wish to "sever" the joint tenancy, thereby becoming tenants in common. The process is straightforward and your spouse does not need to agree. The transition from joint tenants to tenants in common is made by serving a formal "Notice of Severance" upon your spouse. Subsequently the Notice should be registered at the Land Registry.

If the matrimonial home is in the sole name of your spouse, notwithstanding the breakdown of the relationship, you still retain a right of occupation. In those circumstances it is prudent to give notice of your rights of occupation by notifying the Land Registry. Such a Notice will make it extremely difficult for your spouse to seek to sell or charge the property. We always recommend lodging a Notice of Home Rights where the family home is in your spouse's sole name. The Notice will be effective only until Decree Absolute but thereafter an

Briefing Note

Summary:

A general introduction to the financial aspects of the breakdown of a marriage, including frequently asked questions

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alternative method can be employed to prevent your ex-spouse from dealing with the property in any way without your agreement.

You have a right to remain in your matrimonial home until:-

- You agree to move; or
- A court makes an order requiring otherwise.

The court may be invited to order a sale but before making such a decision, would be obliged to look at all reasonable and workable alternatives. If your spouse behaves violently towards you, it may be possible to seek injunctive relief under Part IV of the Family Law Act 1996. Within such an application, in extreme cases, the court can make an "Occupation Order" requiring an occupant to vacate the property.

You or your spouse may decide to leave the matrimonial home pending settlement. Before doing so you should seek advice but in general terms, if you do so, you will have the right to return at any time. You will not relinquish any rights of occupation.

If your spouse leaves the property for whatever reason, you should make enquires of your local authority as you will probably be entitled to a council tax reduction (single occupancy - normally 25%).

3. Who pays for what?

Pending final settlement of ancillary relief claims, you and your spouse should continue to discharge the usual liabilities insofar as possible. If you believe that your spouse should be paying more, by way of maintenance or otherwise, it is possible to make an application to the court for "Maintenance Pending Suit" which applications are designed to address immediate needs. In most cases maintenance can be agreed on an interim basis without the need to make a formal application to the court.

4. Am I liable for his/her debts?

If you and your spouse were both parties to the original loan agreement (e.g. for a car), it would be a joint liability and as such the finance company can look to either of you for payment. If the debt is in your spouse's sole name, the creditor cannot look to you to discharge the loan but can attempt to enforce payments against your spouse's assets.

If the debts were incurred for the good of the family (e.g. home improvements), a divorce court would normally expect the same to be discharged from joint assets and would certainly take them into account when considering how best to allocate the available resources.

We would recommend that you consider bringing to an end any joint account facility you may have with your spouse. In many cases, such arrangements continue well into the process with little difficulty but if you are in any doubt as to how your spouse will operate the account in the light of the breakdown of the relationship, you should seek to agree that individual accounts should be set up to replace the joint facility. Remember that as co-signatories on an account both you and your spouse can each be potentially liable for the full extent of any overdraft/liability. In the event that your spouse refuses to agree to close the joint account (or credit card facility) you should contact the relevant company and revoke the mandate, effectively freezing the account/facility.

5. What financial orders can I expect?

Under the Matrimonial Causes Act 1973, the court has the power to make the following orders upon divorce:-

- Spousal maintenance;
- Maintenance for child (limited by operation of Child Support Agency/Child Maintenance Service);

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- Lump sum;
- Property adjustment (transfer or sale);
- Pension Attachment Order;
- Pension Sharing Order;
- Pension Compensation Order

Your and your spouse's existing and past financial circumstances will determine a fair and reasonable allocation of the available resources in order to meet future needs as far as is possible. The court is under a duty to consider whether it is able to bring about an arrangement under which, when implemented, each party is financially independent of the other (a "Clean Break"). Sometimes that is possible, sometimes not. If there are young children, it is unlikely that the court would order or approve an immediate Clean Break order.

6. What does the court take into account?

The principles which the court must apply are set out and contained within section 25 of the Matrimonial Causes Act 1973.

First and foremost, consideration must be given to any child of the family who has not reached the age of 18. Such consideration leads initially, in most cases to the housing requirements of any such child (and accordingly of the parent having full time care).

Subsequently, there are other factors which the court are obliged to take into account as follows:-

- 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, including in the case of earning capacity any increase in that capacity which it would, in the opinion of the court, be reasonable to expect a party to the marriage to take steps to acquire.
- The financial needs, obligations and 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 the parties and duration of the marriage.
- Any physical or mental disability of either of the parties to the marriage.
- The contributions which each of the parties has made or is likely, in the foreseeable future to make, to the welfare of the family, including any contribution by looking after the home or caring for the family.
- The conduct of each of the parties if that conduct is such that it would in the opinion of the court be inequitable to disregard.
- The value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

These considerations must be applied and form the basis of the process by which the court determines ancillary relief claims.

Each case will have its own unique set of circumstances and you will need the assistance of an experienced family law specialist to identify a realistic and achievable range of options. Those options will be formulated by reference to:-

- the section 25 factors (see above);
- previous decided cases;
- your own reasonable preferences.

7. Do I need to issue proceedings?

You should always attempt to negotiate a reasonable settlement before embarking upon a formal application within divorce proceedings. The negotiation process can take many forms including:-

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- Direct discussions between you and your spouse;
- Communication between solicitors;
- Mediation - essentially a forum within which you and your spouse try to agree as much as possible in a series of meetings with an experienced Mediator;
- Collaborative process – where separating couples meet, with their lawyers, and discuss matters with a view to reaching an agreement.

However, if negotiations founder for one reason or another, court proceedings can be taken, the procedure for which is as follows:-

- A formal application is lodged (Form A) with the court, the fee for which at present is £255
- The court then fixes a standard timetable of steps to be taken up to and including an initial attendance at court (the First Directions Appointment - FDA) which will be scheduled not less than 12 nor more than 16 weeks after the Form A is lodged with the court.
Filing and exchange (with you spouse's representative) of the following:-
 - (1) Form E (financial data and documentation);
 - (2) Questions arising from your spouses Form E;
 - (3) Statement of Issues;
 - (4) Chronology;
 - (5) Costs estimate.
- At the FDA (which both parties and legal advisers must attend) the District Judge will consider the adequacy of the documents filed and in particular whether any further evidence is required. If so he will give directions for such evidence to be obtained and schedule a further hearing to discuss settlement proposals. That appointment is known as a Financial Dispute Resolution (FDR) hearing.
- At the FDR, the District Judge will encourage and assist the parties to reach an agreement/settlement if possible. The idea is to avoid the cost and uncertainty associated with a Final Hearing.
- If no agreement is reached, the court will timetable a Final Hearing at which formal evidence will be heard before the District Judge makes a decision and delivers his judgment.

8. What happens if we reach an agreement before the final hearing?

Although formal ancillary relief proceedings are issued in a large number of cases, the vast majority will "settle" without the need for Final Hearing. In those circumstances, a "Consent Order" is drafted and lodged with the court for approval. Provided that the settlement is fair, the court would normally approve the order without the need for any attendance at court.

9. How much will it cost?

At your first appointment, we will give you an estimate of the likely cost, including details of the way in which the charges are calculated. For the sake of clarity, you will receive written confirmation and, as the case progresses, regular updates. Such will enable you to be absolutely clear about your actual and anticipated costs.

The usual rule in ancillary relief cases is for each party to be responsible for his/her own legal fees. However, during the proceedings you may make an open offer to your spouse to settle. If your spouse turns down the offer and the matter proceeds to an hearing at which he/she does not obtain greater provision than that contained in your offer, we can invite the judge to order that in addition to his/her own costs, your spouse should make a significant contribution to yours. You should not make any offers to settle without reference to a solicitor.

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10. What happens if I re-marry?

There would be serious consequences if you do so without first having made a formal application for financial relief against your ex-husband. If you propose to re-marry and have not obtained a financial order arising from your first marriage you should seek specific advice. In addition, any spousal maintenance order you obtain from your first husband would be extinguished upon re-marriage.

If you would like to know more about this topic or our other legal services, please contact:

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