

Boys & Maughan Family Fact Sheet - FINANCIAL ARRANGEMENTS ON DIVORCE



Settling the financial arrangements after separation can be a major 'flashpoint' during the divorce. In fact this can be far more complicated than the divorce itself. The starting point for any financial settlement must be a full, frank, open and honest disclosure of your respective circumstances including financial circumstances.

The process of a financial settlement is a two stage one:

- All of the assets must be identified and valued.
- Consideration then needs to be given as to how those assets and resources should most fairly be divided.

Alternatives To Court Hearings

Because the court has a wide discretion in applying the law, it can be better to agree your own arrangements where possible and avoid the delay and uncertainty of a court hearing.

Most people are able to agree how their finances should be split with each having the help of a solicitor to advise on what might be a fair division, highlight the options for achieving this and negotiate on their behalf.

Mediation services can sometimes help couples reach agreement on key issues but a solicitor will be needed to advise on the implications of any agreement and convert it into an order recognised and enforceable by the courts. You may also want to consider the collaborative law process as an Option, see our Family Fact Sheet - Alternatives to Court.

The starting point must always be a full and honest disclosure of each person's financial and personal circumstances, to ensure that everything is known about before the financial position is finalised.

Financial Arrangements

The settling of financial matters on divorce, is called 'ancillary relief'. The courts are able to make, (and therefore a couple is able to agree), a range of orders for cash payments, transfer of property or other assets, maintenance and pension sharing.

Sometimes financial arrangements can be settled through a 'clean break', which means a lump sum payment and/or property transfer and no ongoing maintenance. A clean break ends the financial relationship between you and your spouse. Often, however, there may not be enough assets for a 'clean break' and for that or some other reason regular maintenance payments from one spouse to the other may be needed. These can be open-ended, (during joint lives or until the spouse receiving the payments remarries), or for a fixed period of time, for example coming to an end when one spouse goes back to work when the children are older. Even where there is a 'clean break', support will still be payable for any dependent children.

Often a family's main asset is the family home:

- Given that the needs of any children are the first consideration, it will be important to make sure that a suitable home is maintained for them.
- It may be that the family home can be sold with the proceeds divided between the couple, (not necessarily in equal shares), allowing both to re-house suitably.
- Alternatively, the property could be transferred to one spouse with the other perhaps receiving a greater share of other assets.

- A less common approach could allow one spouse to stay in the house with the other keeping an interest in the property, receiving their share at a later date. This might be when the youngest child has finished full-time education.

A pension fund is often an important and valuable asset that can be shared on divorce. Pension sharing will not be appropriate in all cases and, where it is an option, the fund will not always be divided equally. This is a complex area and probably specialist financial as well as legal advice will be needed on how sharing can be achieved in each individual set of circumstances.

If You Do Go To The Courts

If an application is made for the court to decide on the division of property or assets, the court will impose a timetable and you may be advised to issue an application to ensure that negotiations do not drag on for too long.

There are 3 stages to the process:

Stage 1: You and your spouse will be required to:

- Complete a Form E, (a substantial financial statement), setting out all your financial details.
- Produce copies of documents which we will explain, such as bank and building society statements, pay slips, valuations and accounts.

The court will fix a first appointment before a District Judge. The District Judge will identify the issues between you and will set dates by when further information or documents must be prepared or obtained, for example, dealing with valuation of assets or other information required. This stage can take 3-4 months from the date the application is started.

Stage 2: The further information and documentation must be prepared and sent to the court and your spouse. There will then be the 2nd court appointment, a Financial Dispute Resolution, (FDR), appointment:

- Both you and your spouse attend this court hearing with your lawyers and a District Judge to see whether it is possible to settle the dispute.
- The Judge will give guidance to assist the couple to reach agreement; often indicating what he/she thinks would be a reasonable outcome. If it is not possible to settle, there will be a final hearing at a later date heard by a different District Judge.
- At any time before the final hearing it is possible to reach an agreement and submit a note of that agreement, called a consent order, to the judge for approval.

The time scale of this stage will depend on what the issues are but usually takes 4-6 months.

Stage 3: If an agreement cannot be reached, then the Judge will decide what more needs to be done before the case can come back to court for a final hearing when the Judge, (not the same Judge who you will see at the FDR), will hear the case in detail and make a decision. This is usually the most expensive part of the process.

The time scale for this stage will depend on how long the final hearing will be and how soon the court can make a judge available for that. It could be another 4 -6 months.

The Factors To Be Taken Into Account

The law in this area is very flexible so that courts can achieve fairness depending on the individual circumstances of each case. There is no fixed formula, but the main piece of legislation, (the Matrimonial Causes Act 1973), sets out the factors to be considered in deciding what is fair. These same factors will need to be considered in trying to reach an agreement and how important each is will vary from case to case.

These factors are the:

- Welfare of any children of the family.
- Income, earning capacity, property and resources of each person now and in the foreseeable future.
- Financial needs, obligations and responsibilities of each person now and in the foreseeable future.
- Standard of living enjoyed by the family before the breakdown of the marriage.
- Age of each person and the duration of the marriage.
- Contribution made by each person to the welfare of the family, including looking after the home and bringing up children.
- Conduct of each person, but only if it is so bad it would be unfair to ignore it.
- Physical or mental disability.
- Any benefit lost because of the divorce, (in practice this is restricted to loss of pension benefits).

You will each have rights to occupy the home. Neither of you can lawfully restrict nor suspend the other's right to enter or occupy, (change the locks). Only a Court has the power to do so under Part IV Family Law Act 1996. *See our fact sheet on Domestic Abuse*

The contents of this fact sheet are general principles and do not constitute legal advice. Every case is different.



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