

Handling financial claims during your divorce or civil partnership dissolution



Usually the breakdown of a marriage or civil partnership will result in the need to resolve complex financial issues.

At Wards Solicitors, our family lawyers are experienced in providing practical and supportive advice. This factsheet is designed to give you information on the financial aspects of a divorce or a dissolution of a civil partnership. We have further factsheets on divorce procedure, dissolution of civil partnerships, children and injunctions. If you have any questions, please contact us.

Sorting out your short-term finances

Ownership of the house

You must let us know as soon as possible if the house is owned in your joint names with your spouse or partner. If you have any doubts about this, tell us, as we may have to take steps to protect your interest in the property.

Altering ownership of the house

If you own the property as joint tenants, it means that if one of you dies, the house will pass to the survivor automatically, regardless of what is stated in any Will. You can change this by serving a simple notice through us on your spouse or partner so that half the value of the property would be treated according to your Will and would not automatically go to your spouse or partner (and the same would be true in reverse).

However, your spouse or partner would still have a right to make a claim to the court if your estate on death failed to make proper provision for him or her.

Mortgages

If the property is in your joint names, it is likely that the mortgage will be too. If so, you are both liable to pay the mortgage

and if the lender has to bring possession proceedings against you, you would both be responsible for any shortfall in payments. You must also ensure that any endowment or life insurance payments are kept up-to-date. Failure to do so could result in you being in breach of your mortgage terms.

If you get into difficulties with your mortgage payments you should tell your lender as soon as possible. Many will give you a few months' grace or will negotiate lower monthly payments. If your home is repossessed you will be liable for the debt and any interest that builds up, until the property is sold. You will also be liable for the cost of selling the property and for any shortfall between the sale price and the outstanding debt.

If you qualify for state benefits you should be able to get help paying interest on some of your mortgage. You might be better off working part-time and claiming Working Tax Credit. You should seek full advice from your local CAB on state benefits.

It is worth checking whether you have insurance to pay your mortgage if you become sick, redundant or unemployed. You should also speak to your lender to make sure that your spouse or partner cannot borrow any extra money under the terms of the mortgage.

General financial issues

You must keep a close eye on the state of your own and your spouse or partner's finances. If there are major debt problems, then you must seek further advice before they get out of hand.

Under no circumstances should you sign any documents relating to finances without taking legal advice first. If you receive any correspondence directly from your spouse's or partner's solicitor or other official body, please let us know immediately.

If financial issues are not sorted out quickly, we might delay applying for the Decree Absolute or dissolution order. You do not have to sort out the house before you can get the divorce, judicial separation or dissolution finalised but it is often advisable to do so.

Dealing with financial cases can take a long time. If negotiations are getting nowhere, we can apply for the court to deal with financial matters.

If you have reason to believe that your former spouse or partner is disposing of any assets of the marriage or civil partnership, please let us know so that we can take action to protect you.

Sorting out your long-term finances

Before we can advise on the right financial settlement for you, we need full details of your financial position. There is a duty on your spouse or partner to provide the same details. This includes income, outgoings, capital (savings, shares, premium bonds, the value of any property or properties that you own, collections, business assets, value of pension funds etc) and any likely future changes in the arrangements.

Failure to provide full financial disclosure may result in any agreement subsequently being set aside by the court.

Please do not give us any documentation relating to finances in your partner's name. We will not be able to accept or use it however useful you feel it will be. You should not keep any documents belonging to your partner either as this is a breach of confidentiality and you could be criticised by the court for doing so. Should you have any queries please ask.

Pre-action protocol for financial issues

The solicitors on both sides must adhere to Preaction Protocol Rules regarding the disclosure of financial information and the negotiation of a financial settlement. It is important that you are aware of these rules, as failure to comply with them could result in you paying your partners lawyer's fees.

The aim of the Protocol is to give you and your spouse or partner the best chance of resolving matters without the expense and stress of asking the court to impose a decision. Our aim is to obtain the best settlement for you.

General principles

The main object of the court rules is that all cases should be resolved quickly, without costs being unreasonably incurred and with a just and correct solution. The needs of any children must be safeguarded.

The legal fees incurred in your case must be in proportion to the value of the assets in dispute. It is rare for the court to order one side to pay the other's costs.

Identifying the issues

Both parties must outline their claims and identify the issues between them as soon as possible.

Correspondence

Protracted and unnecessary correspondence between parties should be avoided. Correspondence which raises irrelevant points or which might make the other party hostile should not be sent. We will often ask you to approve letters to your spouse or partner or his or her solicitor before they are sent.

Experts

Expert valuation evidence of your or your spouse's or partner's financial worth is only necessary where the parties cannot agree or do not know the value of a significant asset. The cost to obtain a valuation should be in proportion to the sum in dispute. Wherever possible, valuations from a single valuer who is jointly instructed by both parties are obtained.

Disclosure

Both parties must provide full, frank and clear disclosure of facts, information and documents which are relevant. Failure to do this could result in an order for costs being made against you later on by the court. The duty to provide disclosure is a continuing one. This means you have to tell the other party of any significant changes that happen to you during the case.

We will need the following:

1. Your last 3 payslips and last P.60.
2. Valuations of all properties if they are available and are less than 6 months old.
3. Most recent mortgage statements.
4. Your last 12 months of bank statements for all accounts.
5. Any insurance policy surrender valuations.
6. Last 2 years of business accounts if you own a company.
7. All pension valuation documents.

Mediation

Mediation is where you and your former partner meet an independent mediator who specialises in working with couples involved in separation, divorce and dissolution of civil partnerships. It gives you both an opportunity to consider all the options available and make decisions for the future. It is not designed to help you restart your relationship.

You are expected to attend a Mediation Information Assessment Meeting (MIAM), before making applications to court. A trained mediator will assess whether your matter is suitable for mediation. Under the current law, we cannot apply for Legal Aid to apply to the court to sort out a dispute about your finances or children unless you have met a mediator to find out whether or not your case is suitable for mediation. There are exceptions to this which we can discuss with you.

The mediator will discuss with you how they work and the cost implications as well.

You can still take legal advice from your solicitor while the mediation is taking place.

We also have fully trained Collaborative Lawyers. Please enquire if you would like more details about this modern, co-operative procedure.

Divorce, judicial separation and dissolution of civil partnership proceedings

'Financial Remedy' is the process of sorting out financial matters relating to the main divorce, judicial separation (i.e. formal separation that stops short of divorce) or dissolution of civil

partnership proceedings. The court has to consider all the circumstances of the case, first consideration being given to the welfare of any child in the family. Specifically, the court has to consider:

1. The income, earning capacity, property and other financial resources of the parties, both now and in the foreseeable future.
2. The parties' financial needs and obligations.
3. The standard of living before the breakdown of the marriage or civil partnership.
4. Any disability of either party.
5. The contributions of the parties past or future, including non-financial contributions such as looking after the home or caring for the family.
6. The conduct of the parties but only if, in the court's opinion, it would be wrong to disregard it. It is quite rare for the court to be influenced by a party's behaviour.
7. The value of benefits to be lost by a party on the end of the marriage or civil partnership (e.g. a pension).

Separation Agreement

If there are no grounds or is no wish to start divorce proceedings, judicial separation proceedings or dissolution of civil partnership, it is possible to sort out finances in a written Separation Agreement. This is a written agreement which sets out the financial settlement agreed between you both. To have any legal validity it needs to be a formal document, written by a solicitor.

Unlike a court order, separation agreements will not necessarily prevent financial applications being made to the court by either party. We can advise on the appropriateness of either a separation agreement or a court order in your particular circumstances.

Maintenance for children

If you are the main carer of children and the other parent has an income, you are likely to be entitled to maintenance for the children. A figure can be agreed with the other parent and we can advise on what would be a reasonable amount. In the absence of any agreement, you may need to make a referral to the Child Support Agency.

Maintenance for children

For many people, after their home, their pension funds are their next largest asset. Pension can include:

- Occupational pensions
- Personal pensions
- Retirement annuities
- Death in Service Benefits, including lump sum and dependants' pensions

In addition, there is the entitlement to State Pension. It is important that the value of all these is assessed accurately and included in the financial considerations and disclosures. Any pensions already in payment should also not be overlooked, as it is possible for a claim to be made upon these.

Investments

Investments can include cash, gilts, bonds, equities, unit and investment trusts, Open Ended Investment Companies (OEIC's) and life assurance policies (including endowments). Both current and future tax implications should be considered before any disposal or transfer of investments. In some cases, it is possible to obtain a higher cash value by selling rather than surrendering life policies. Any loss of life assurance cover should also be considered.

Protecting maintenance payments

On the death of your former spouse or partner, any maintenance payment will end. You should take advice on protecting the order to ensure your ongoing financial security. Often, new commitments are entered into on the basis of this maintenance, resulting in financial hardship if it suddenly stops.

Maintenance for children

A review of your mortgage requirements is prudent. Where applicable, this should cover:

- Options for taking over an existing mortgage
- Releasing additional equity for settlement purposes
- Raising a new mortgage
- Reducing your monthly outgoings

Future financial planning

By having a thorough understanding of your financial position and by establishing and working to a financial plan within your means, the impact of the financial aspects of divorce, separation or dissolution of civil partnership can be lessened. We are able to recommend independent financial advisers to help you.

Capital Gains Tax

You might be liable for this as a consequence of sorting out finances following a separation. This is particularly so if you have investments or more than one property. We can discuss this as and when it becomes relevant to your case.

For more information on divorce and relationship breakdown please follow the link wards.uk.com/divorce-and-family.

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