

Beck Fitzgerald

lawyers & consultants

## How the courts deal with the financial aspects of divorce



*working for  
accessible justice*

## How the court deals with the financial aspects of divorce

In order to reach a fair settlement in respect of property and finances, it is essential that there is full and frank financial disclosure so that both you and your ex know exactly what the matrimonial assets are.

We try to ensure that this disclosure is made voluntarily by the exchange of standard financial statements (known as Form E's). These forms are usually exchanged voluntarily on an agreed date so that you and your ex can compare your respective positions. It is often the case that you have questions following this exchange and again, it is usual to seek answers from one another so that you are placed in a position of full understanding on a voluntary basis.

Once you have both understood the financial picture, offers to settle can be put forward and considered either directly, through solicitor negotiations or with the assistance of a third party during mediation. If it is possible to reach agreement, a consent order can be drawn up reflecting the terms agreed between you, submitted to court to take effect at the end of the divorce process without the need for either of you to go to court.

This voluntary process is preferable because it saves time, costs and the stress of going to court. You remain in control of the timetable rather than being led by the court timetable and, because there is no need for any hearings, it is usually much more cost effective.

There are, however, times when it is not possible to achieve a settlement on a voluntary basis, for example if there is a question mark over whether or not disclosure has been full and frank, if there is an asset you can't agree the value of, or if one of you is not cooperating.

In these circumstances a court application may become necessary.



Whether you are considering an application to court or whether you are exchanging financial information and offers of settlement on a voluntary basis, it is important to understand how the courts make decisions in relation to finances.

The court has a very wide discretion when deciding how family assets should be shared and can alter the ownership of existing assets, order that assets be sold or even overturn transfers that have already taken place.

When deciding how the assets should be shared the courts will have to give first consideration to the needs of any minor children.

Thereafter the ultimate objective is to achieve a 'fair' outcome between the parties and in doing so, the courts have to take into account the factors set out in section 25 of the Matrimonial Causes Act which can be summarised as follows:

- The income, earning capacity, property and other financial resources which each of you have or are likely to have in the foreseeable future; Your standard of living enjoyed prior to the marital breakdown;
- The contributions each of you have made or are likely to make in the foreseeable future (including contributions by way of looking after the home and children);

- The conduct of each of you, but only where such conduct is so bad that it would be unfair to disregard it;
- The value of any benefits which might be lost (eg. Pension provision).

The significance of each of these criteria and the weight given to them will vary from case to case.



It is worth noting that the courts will almost always consider an equal division of assets and only depart from equality where such a departure is justified (eg. Whether housing needs of the children require it), this is known as the 'sharing principle'.

The court has very wide powers and can make a variety of orders which usually include one or more of the following:

- **Property Adjustment Orders** (eg. Ordering that the family home be sold or transferred to one of your names);
- **Lump Sum Orders** (for the payment of a sum of money by one of you to the other);

- **Pension Sharing Orders** (eg. Where one of you has a larger pension than the other the court may order funds be transferred from one scheme to another);

- **Maintenance.** Maintenance orders can be made on an interim basis while the proceedings are going on to tide you over until the case is concluded and/or as final orders at the end of the case.

Not all assets are viewed by the courts as family assets. Certain assets can be treated differently but only where it is possible to achieve a fair outcome generally without them. Courts have a wide discretion in determining the terms of what will be a fair outcome.

They will often regard inherited assets, or assets acquired by you before cohabitation began or after you separated as 'non marital' assets. It is sometimes possible to ring fence those assets out of the settlement but much will depend on the facts in the case.

When deciding whether an asset can be ring fenced, the court will consider such matters as follows:

- The nature and value of the asset;
- When you acquired the asset;
- The length of the marriage;
- Whether the asset still exists;
- Whether the asset has been mixed up with other family assets or was kept separately;
- Whether the asset is needed in order to achieve a fair overall outcome.

Our separate leaflet will give you a better understanding of the procedure should an application to court become necessary and our leaflet on mediation will give you an outline on the mediation process. We will discuss with you whether we think mediation could help in your case.

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