

A GUIDE TO FINANCIAL ARRANGEMENTS AFTER MARRIAGE BREAKDOWN



Dividing up your property and assets following the breakdown of your marriage can be very complicated. This information sheet sets out the law and procedure as it relates to dividing your finances following divorce or judicial separation. We cannot look in detail at all the different things you may need to consider as the law is complex. Your individual and family circumstances will be unique to you and it is therefore important that you also seek independent legal advice.

If you were not married to your partner but have jointly owned property or assets which need to be divided this information sheet does not apply to you. See our *Guide to Living Together and the Law*, telephone our legal advice line or consult a solicitor.

The Law

Once you or your husband have started divorce (or judicial separation) proceedings (see our *Guide to Divorce*) either of you can apply to the court for a number of orders to deal with your matrimonial property. This is known as applying for **ancillary relief**. The law in relation to these applications is set out in the **Matrimonial Causes Act 1973** (MCA 1973).

What is my matrimonial property?

Your matrimonial property is any property or assets **owned by either you or your husband** in either your **sole names** or in your **joint names**.

Matrimonial property can be:

- your matrimonial home (where you and your husband lived)
- any other property owned by you and/or your husband

- the contents of your matrimonial home and your car
- any savings, life assurance policies, endowment policies, stocks, shares or bonds
- any pensions

The court can also look at debts owed by either you or your husband during your marriage.

What orders can the court make?

There is a wide range of orders the court can make to divide your matrimonial property including:

- transferring property into your or your husband's sole name
- transferring a tenancy into your or your husband's name
- ordering that a property be sold and the proceeds of sale be divided between you
- placing a legal charge over property or other assets in your or your husband's favour
- payment of a lump sum to you or your husband
- future payment of a lump sum to you or your husband from your respective pension funds
- varying your or your husband's pension provision so that you or he benefit from it
- ordering you or your husband to pay on-going maintenance to the other

What can I do if I am worried that my husband will dispose of our matrimonial property?

If you fear that your husband may dispose of your matrimonial property you can make an **emergency application** to the

court for an injunction to freeze the assets or prevent him dealing with them.

If the matrimonial home is in your joint names you have equal rights as owners and your husband will not be able to dispose of the property without your consent. However, if your husband owns the matrimonial home in his sole name your right to live in the property will only continue as long as the marriage. This is called **home rights** and is sometimes referred to as matrimonial home rights. You can protect your rights so that if your husband tries to sell the property you will be informed and the sale will not be able to proceed without your consent. How you protect your rights will depend on whether the property is registered with the Land Registry or not. If you are not sure you can contact the Land Registry (see Other useful telephone numbers) to find out.

If the property is registered at the **Land Registry** you should fill in an **Application for registration of a notice of home rights** (form HR1) and send it to the Land Registry. Your husband will automatically be informed by the Land Registry that you have made the application.

If the property is not registered the procedure is different. In this case you will need to apply to the **Land Charges Department** (see Other useful telephone numbers) to register a **Class F land charge**. The Land Charges Department will not inform your husband about this.

It is essential that you use the correct procedure because otherwise your rights will not be protected. If you are unsure please telephone our advice line or consult a solicitor.

How does the court decide how to divide our matrimonial property?

When considering how to divide your matrimonial property the court will consider **all the circumstances of your case** but firstly the **welfare needs of any children of the family who are under 18**.

The court will then consider:

- the income, earning capacity, property and financial resources of you and your husband now and in the future
- the financial needs, obligations and responsibilities of you and your husband now and in the future
- the standard of living during your marriage
- your ages and the length of your marriage
- any physical or mental disability of you or your husband
- any contributions you and your husband has or will make, including looking after the home and caring for children
- any behaviour by you or your husband that the court considers relevant
- any value or benefit to you or your husband which you would lose when divorced (for example, a pension benefit).

In deciding how to divide your matrimonial property the court will aim to ensure that you and your husband's financial dependence on each other ends as soon as is possible without causing hardship to either of you. Wherever possible the court will therefore try to make a **clean break** order. This will not always be possible where there are children under 18.

Behaviour and domestic violence

When the court looks at behaviour in dividing your joint finances it is only looking at behaviour that directly affects your financial position. So behaviour such as attempting to dispose of or hide assets may be taken into account when property is divided while other behaviour, such as unfaithfulness would not be. However, the courts have recently taken very serious domestic violence into account where it has affected a woman's earning capacity.

Ancillary relief procedure

Before a solicitor can properly advise you she will need to have details of both your and your husband's financial situation. This will include details of all your matrimonial property, income and outgoings and is called **financial disclosure**. This process can be done through solicitor's correspondence or through the court procedure if your husband is not cooperating. Once your solicitor has enough financial information she can begin to advise you and start to negotiate a settlement with your husband.

If you are able to reach agreement your solicitor may draw up a **consent order** setting out your agreement which is then signed by you both and sent to the court for approval by the judge. You do not need to attend court for this. Once it has been approved the consent order is legally binding.

If you cannot reach agreement you may want to consider attending **mediation** with your husband. Mediation is a voluntary process where you and your husband have face-to-face discussions

with the help of a trained mediator and try to reach an agreement. You should always seek legal advice on any agreement you reach as your mediator is not there to give you legal advice. Any agreement you reach can be drawn up into a consent order. However, mediation will not be appropriate if you have experienced domestic violence during your marriage or if there is an imbalance of power within the relationship, for example, because you have a disability or because English is not your first language.

If you cannot reach agreement either of you can make a formal application for ancillary relief to the court by filling in **Form A**. The court will set a date for a **First Appointment**. You and your husband will be ordered to exchange financial disclosure on a **Form E**. You must send your completed Form E to the court and your husband no later than 35 days before the date of the First Appointment. If you are representing yourself there are *Form E (Financial Statement in Ancillary Relief Proceedings) Notes for guidance* to help you complete it which are available from your local Family Proceedings or County Court or from the Court Service website.

If you are not happy with the information provided by your husband you can ask him further questions about his finances in a **questionnaire**. At the first hearing or **First Appointment** the judge will decide what questions are relevant to the case and which your husband should answer. If you are able to reach an agreement the judge can make a consent order.

If there is further information needed and you can't reach agreement the judge will

arrange a **Financial Dispute Resolution Appointment (FDR)**. At this hearing the judge will give an indication of how she would divide the matrimonial property and encourage you to reach agreement. The judge who sits at the FDR will not hear your case again. If you are able to reach agreement the judge can make a consent order.

If you cannot reach agreement the judge will arrange a **final hearing** at which you and your husband may have to give evidence in the witness box. The judge will then make a decision about how your matrimonial property should be divided.

Collaborative family law

Collaborative family law is increasingly being used to resolve disputes after relationship breakdown. It involves negotiating with your husband in a series of face-to-face meetings. Unlike mediation, in collaborative law you attend these meetings with your lawyer so you and your husband will be negotiating with each other with the help of your legal representatives, who must both be trained collaborative lawyers. The aim of collaborative law is to assist people reaching a favourable solution to their dispute in a fair and transparent way. If you use collaborative family law you and your husband will sign a **participation agreement**, an agreement to try to reach a solution without going to court.

If you are able to reach agreement your solicitor may draw up a **consent order** (see above). If you are unable to reach an agreement you can still apply for ancillary relief in the normal way (see above) but you will have to consult a different

solicitor because you cannot use the same solicitor who assisted you in negotiations.

If you have experienced domestic violence then resolving financial or other matters though collaborative law will not be appropriate.

Maintenance while your case progresses

If you have been financially dependant on your husband you can apply to the court for maintenance until a decision is made about how your joint property is to be divided. This is sometimes called an application for **maintenance pending suit**. Your husband can be ordered to pay you any amount of maintenance that is reasonable for your needs. This can include an amount to help you pay your legal costs. However, maintenance will only be paid until your joint property is divided and the fact that you receive maintenance during your ancillary relief case does not automatically mean that you will receive it in the long term.

How much will my case cost?

In general the court will not make orders for costs in ancillary relief proceedings; this means that each party will pay their own costs. It is impossible for us to give an

estimate of how much your case will cost. This will largely depend on the hourly rate of your solicitor and how long the matter takes to be resolved. You may, however, be eligible for public funding (legal aid) and should ask a solicitor to do an assessment.

The court may make an order for costs in ancillary relief proceedings if it is appropriate to do so because of the behaviour of one of the parties in relation to the court proceedings. For example, if either party fails to comply with a court order it may be ordered to pay some of the other party's costs.

Financial support for children from a marriage

The law relating to financial support for children is in the process of change. The courts currently have only limited powers to make orders for child maintenance. Please see our *Guide to Child Support* or telephone our legal advice line.

The law relating to this issue can be complex and we have provided a very basic overview of the terminology, law and court practice and procedure. We would strongly advise you to seek legal advice by either telephoning our legal advice line or a solicitor.

Please note that the law as set out in this information sheet is the law as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this information sheet. This information sheet is designed to give general information only.

For free confidential legal advice on family law including divorce and relationship breakdown, children and contact issues, domestic violence and lesbian parenting call the Rights of Women Advice Line on **020 7251 6577 (telephone) or 020 7490 2562 (textphone).**

**Tuesday, Wednesday and Thursday 2pm – 4pm and 7pm – 9pm
Friday 12 noon – 2pm**

For free confidential legal advice on sexual violence and the criminal law please call our Sexual Violence Advice Line on **020 7251 8887 (telephone) or 020 7490 2562 (textphone).**

Mondays 11pm – 1pm, Tuesdays 10am – 12 noon

Other useful telephone numbers

Child Support Agency	08457 133 133	www.csa.gov.uk
Collaborative Family Law Group		www.collablaw.org.uk
Community Legal Service Direct (for finding a solicitor)	0845 345 4345	www.clsdirect.org.uk
Department of Work and Pensions (Benefit Enquiry line)	0800 882200	www.dwp.gov.uk
Her Majesty's Court Service		www.hmcourts-service.gov.uk
Land Registry		www.landreg.gov.uk
Land Charges Department	01752 636666	www.landreg.gov.uk
National Debtline	0808 808 4000	www.nationaldebtline.co.uk
National Domestic Violence Helpline	0808 2000 247	www.womensaid.org.uk
National Family Mediation	01392 271610	www.nfm.org.uk
Relate	0845 130 40 16	www.relate.org.uk
Resolution (for finding a family solicitor)	01689 820272	www.resolution.org.uk
Samaritans	08457 909090	www.samaritans.org.uk
Shelterline	0808 800 4444	www.shelter.org.uk

Rights of Women, 52-54 Featherstone Street, London EC1Y 8RT

Office/Admin: 020 7251 6575/6 Textphone: 020 7490 2562

Fax: 020 7490 5377

Email: info@row.org.uk

Website: www.rightsofwomen.org.uk

Industrial and Provident Society No: 23221R

