

DIVORCE – FINANCIAL MATTERS

ANCILLARY RELIEF PROCEEDINGS

is the legal term for financial proceedings brought in the course of a divorce (or judicial separation) and are proceedings to resolve financial matters between the parties eg. **MAINTENANCE, PROPERTY TRANSFER** and a **LUMP SUM PAYMENT**.

In many cases the parties will be able to resolve financial matters without having to resort to court proceedings. It may be possible to negotiate an amicable financial settlement with the parties negotiating directly with each other, or through solicitors, or during mediation. If a settlement can be reached the terms of the agreement can be embodied in a **CONSENT ORDER**. This is a written agreement which is submitted to the Court for approval and in most cases the Judge will rubber stamp the agreement (there is not normally any need for the parties to attend Court) and the agreement will then become a legally binding Court Order. A final order cannot be made until Decree Nisi is proclaimed, and cannot come into force until Decree Nisi has been made Absolute. If it is not possible to agree a financial settlement formal **ANCILLARY RELIEF** proceedings will have to be issued with the court where the divorce or judicial separation proceedings are taking place.

ANCILLARY RELIEF PROCEDURE

Either party can start these proceedings, it does not have to be the Petitioner in the Divorce, although in practice it normally is and therefore it

will be assumed for these purposes that the Petitioner is bringing the proceedings against the other party, the Respondent.

The Petitioner starts the proceedings by lodging with the Court a Notice of Application (Form A).

After proceedings have been issued there are usually three stages to obtaining a financial Order:-

1. The First Appointment.
2. Financial Dispute Resolution (FDR).
3. The Final Hearing.

Some cases are resolved more quickly and may not need to go through all three stages.

When the Court receives Form A, the Court will list the application before a Judge who will first consider the case. The Court will send the Petitioner and Respondent Notice of the First Appointment. Each party must attend. The date will be fixed between 12 and 16 weeks from the date Form A is filed at Court. The First Appointment can only be changed (adjourned) with the Court's permission or if the Petitioner and Respondent agree.

WHAT NEEDS TO BE DONE BEFORE THE FIRST APPOINTMENT?

Each party must complete a Financial Statement (Form E) which must be sworn on Oath or affirmed that the contents are true. Certain documents must be filed with Form E, e.g. proof of income, and bank statements. The completed and sworn Form E must be filed at Court and exchanged with the other party on or before the date fixed by the Court. This is set no later than 35 days before the date of the First Appointment. The Court may make an Order for Costs against a party who fails to file Form E and other documents, or fails to attend Court appointments.

Each party is required to file and serve at least 14 days before the Hearing of the First Appointment the following:-

- a) A concise Statement of Issues between the parties.
- b) A Chronology.
- c) A Questionnaire setting out by reference to the concise Statement of Issues any further information and documents requested from the other party or a Statement that no information and documents are required.
- d) A Notice in Form G stating whether that party will be in a position at the First Appointment to proceed on that occasion to a Final Dispute Resolution Appointment.

At the First Appointment the Judge can do any of the following:-

- i) Give further Directions on how the case will proceed e.g. for the joint instruction of a Valuer to value assets;
- ii) In circumstances where the parties have agreed settlement, make a Final Order;
- iii) Refer the case to an FDR Hearing;
- iv) Adjourn the case for the parties to attend 'mediation' if appropriate. Mediation involves someone not connected with the case, helping the parties to reach an agreement and takes place away from the Court.

WHAT HAPPENS AT THE FDR?

No later than 7 days before the FDR the Applicant must file at Court all details of all offers made and received. The FDR is an informal Hearing. All documents and Valuations will be available. The Judge will assist the parties to reach an agreement on those issues that remain in dispute. If an agreement cannot be reached, a date for a Final Hearing will be fixed.

WHAT HAPPENS AT THE FINAL HEARING?

The Judge will consider all the available evidence and make a Final Order. The Judge will not be the same one who dealt with the FDR Hearing.

COSTS

At every Hearing, the parties must provide the Court with an up-to-date estimate of costs. This will help the Judge to make any costs Orders if appropriate.

OFFERS TO SETTLE

Either party at any stage may make a written offer to each other to settle any issue or part of the proceedings relating to the application for Ancillary Relief.

FUNDING

There is a Court fee of £240 on filing the application.

If, in the course of the financial proceedings there are good grounds for believing that one of the parties intends to dispose of assets it is possible for the other party to apply to the court for an **INJUNCTION** to prevent that disposal taking place.

WHAT ORDERS CAN THE PARTIES AGREE TO OR THE JUDGE MAKE?

There are a wide range of possible orders that can be made. In relation to any property there can be an **ORDER FOR SALE, AN ORDER TRANSFERRING THE PROPERTY ABSOLUTELY INTO THE NAME OF ONE PARTY OR AN ORDER PROVIDING FOR A SALE OF THE PROPERTY IN THE FUTURE EG.WHEN THE CHILDREN FINISH THEIR EDUCATION.** There may be a combination of these orders and on sale of property the court can determine how the proceeds of sale are to be divided (it is not automatically 50:50).

The court can also order transfer of other assets, payment of a **LUMP SUM** of money and make declarations as to who should have the benefit of eg insurance policies or household furniture.

The court can order **MAINTENANCE PAYMENTS** to be made from one party to the other. In relation to **CHILD MAINTENANCE** however, in most cases this is no longer dealt with by the courts and will be assessed by the **CHILD SUPPORT AGENCY** who calculate maintenance using strict formulae, and there are limited rights of appeal. Normally it will be necessary for a Child Support Act assessment to be done before any final agreement or order is made as the assessment will need to be taken into account as it will be

relevant to the income and outgoings of the parties.

The Court can order an Earmarking Order with regard to either parties pension provision.

For any petition issued after 1 December 2000 the Court can make a Pension Sharing Order.

In deciding what final order should be made, a number of factors (which are laid down by the law) have to be considered. The first factor is the **WELFARE OF ANY CHILDREN OF THE FAMILY**. The court will always want to ensure that the children will be adequately housed and provided for and this will affect the order made in favour of the party who has the children living with them. Other factors include the length of the marriage, the contributions made by the parties to the marriage and the needs and resources of both parties. Only in extreme cases will the conduct of one of the parties be taken into account eg. extreme financial irresponsibility. The court does not seek to punish one party in financial terms and attribute blame for the breakdown of the marriage.

Lees Solicitors LLP provide this fact sheet free of charge

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