

A Short Guide to Divorce and Financial Settlements on Divorce

1. RECONCILIATION

At times of stress, we sometimes act rashly often to regret our actions later on. At the first meeting with RPJ, therefore, we can discuss the possibility of reconciliation and a referral to a relationship counsellor. We want you to be sure that a divorce is the answer before you proceed further, as a divorce will end your marriage. Many couples who consult lawyers decide instead to try to resolve their differences rather than get divorced.

If, however, you decide to proceed with a divorce, it does not need to be acrimonious if both parties recognise that the problem is mutual and best dealt with rationally, calmly and, if possible, without emotion.

The members of the family team at Reynolds Parry Jones are members of **Resolution**, formerly The Solicitors Family Law Association, and we will try to help you to work things out fairly, to ensure that you recover what is rightfully yours, perhaps without needing to go to court. We will discuss all your options including the possibility of **mediation** as an alternative to litigation - see paragraph 4.4 below.

2. DIVORCE

To obtain a divorce you must prove that the marriage has irretrievably broken down in one of five ways:

- I. adultery;
- II. your spouse's unreasonable behaviour;
- III. your spouse's desertion, followed by a separation for two years;
- IV. two years separation with your spouse's consent;
- V. five years separation whether or not your spouse consents.

If you start the divorce you are the Petitioner. If you are named as the other party, you are the Respondent.

Unfettered divorces normally take four to six months to complete. There is no need to attend court unless there is a dispute: e.g. about who should pay the costs of the divorce proceedings.

If the judge thinks that you have proved the allegations in your divorce petition, you will be granted a Decree Nisi. However, it is only when you have the Decree Absolute that you will be divorced and your marriage will be at an end.

The Petitioner can apply for the Decree Absolute six weeks after the Decree Nisi. The Respondent can apply after the expiry of a further period of three months.

The application for the Decree Absolute is often delayed until the parties have reached a financial

settlement to avoid the loss of financial rights: e.g. death in service and pension benefits which are only paid to a spouse.

3. CHILDREN

A residence order settles the arrangements as to the person with whom a child is to live. A contact order requires a person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other.

The court is not concerned with residence of the children, or contact with a non resident parent, unless there are difficulties and one or both parties ask the court to intervene

4. FINANCES

4.1. The Court's powers on a financial settlement.

On grant of the Decree Nisi, the court can make orders for the transfer of property, one off lump sum capital payments, pension attachment/sharing and spousal/child maintenance. The orders cannot take effect, however, until grant of the Decree Absolute.

In settling a financial dispute, the object of the Court is to establish the extent and the nature of the family assets and then try to divide those assets having regard to the:

- financial resources of the parties;
- standard of living enjoyed by the family before the breakdown of the marriage;
- financial needs, obligations and responsibilities which each party has or is likely to have in the foreseeable future;
- age of each party and the duration of the marriage;
- contribution made by each party to the welfare of the family, including contributions made by looking after the home or caring for the family;
- conduct of each party if it would be unjust to disregard it. Generally, behaviour is very unlikely to be taken into account unless it has affected the parties' finances: e.g. a party has given up work unnecessarily or dissipated assets.
- the value to either party of any benefit (e.g. a pension) which, by reason of the ending of the marriage, the other party will lose the chance of acquiring.

Although the court's starting position is a 50:50 split of the capital assets, it has wide-ranging powers when apportioning assets following a divorce. Its primary concern will be the welfare of any minor children. A court will seek to ensure that the children and their carer have a suitable roof over their heads with sufficient money for their reasonable needs to be met. If an equal split does not meet these needs, the courts have the discretion to produce a more tailor made solution.

4.2. Negotiation and disclosure

It is important that you do not assume that you know everything about your spouse's financial situation.

If you want to obtain the best settlement that a court would give, you should consider obtaining full disclosure of your spouse's income and assets before discussing any settlement proposals.

It is, of course, a matter for you whether you ask for full disclosure but if you reach an agreement without doing so and later find out that your spouse's circumstances are not as you had previously thought, it is unlikely that you will be able to re-open the settlement later on.

We cannot give anything other than very general advice about a financial settlement without full details of you and your spouse's income and capital assets, with supporting documentary evidence.

4.3. Children

The Court can order a payment of child maintenance, but only if the provision is agreed by the parties. If not, the matter will be dealt with by the Child Support Agency (CSA). You can access the CSA Website on www.csa.gov.uk which includes a drop down menu on "How to calculate your maintenance" or contact the CSA on their national help line 08457 133 133. The Court has power to order capital sums in favour of children, but these are unusual.

4.4. Family mediation (an alternative to court proceedings for a financial settlement).

Family mediation helps those involved in family breakdowns to communicate better with each other and make their own decisions about all or some of the issues arising from divorce. It is an alternative to having solicitors negotiating for you or having decisions made for you by the courts. However, we will still be able to advise you about the decisions you are thinking of making. We can put you in touch with a mediator if you wish to pursue this avenue further.

4.5. Collaborative law.

As a further alternative to Litigation or Mediation we can offer a process known as collaborative law. This is fairly new and requires specialist training of the solicitor concerned.

As in mediation, the process does not involve the court but each side appoints their own solicitor and all four parties agree to collaborate by working and meeting together to reach an agreed settlement. All issues are dealt with openly, in face-to-face meetings where all parties are present and all have a real incentive to reach agreement (the spouses to save time, inconvenience and cost of court proceedings and the lawyers who agree to step aside in favour of other lawyers if the spouses decide to go to court).

4.6. Court order

Whatever you agree with your spouse (through solicitors, by mediation, direct negotiations, or otherwise), you should consider having your agreement approved by the judge and sealed by the court as a final order.

Without an order, either party could make a further financial claim against the other and seek to go back on the terms of any settlement reached informally with their spouse. For example, if your financial situation improved significantly or your ex spouse's situation worsened (e.g. due to ill health or unemployment), or they felt that they had agreed a settlement under pressure, they may feel tempted to make a further financial claim and would be free to do so without an order stopping them.

We can advise about how to obtain a court order and how to minimise the risk of future claim.

5. LEGAL FEES

We offer an initial review at the first meeting where we will discuss your case with you and advise on your options. This review is charged as a fixed rate of £180 (inclusive of VAT), payable at the meeting.

In some circumstances we are able to deal with your matter on a fixed fee basis; if not, we will give you an estimate of the likely charges and expenses of dealing with your case at the outset, which we will review as the matter progresses. We will tell you if it appears that the estimate may be exceeded.

If you think that you might qualify for Legal funding (formerly Legal Aid) you should check your eligibility by looking on the Website for the Legal Services Commission (www.legalaidcalculator.justice.gov.uk) which has a financial eligibility calculator on a drop down menu. This is generally the cheapest way of funding a case.

6. SEVERANCE OF JOINT TENANCY.

If you own the matrimonial home jointly with your spouse, it may be owned in such a way that on the death of one, the other automatically owns the whole property, whatever is said in the deceased's will.

If you want to ensure that your interest in the property passes to someone else (e.g. children from a previous relationship) you must "sever the tenancy". This can be achieved simply by serving a notice on the other party.

Your share in the property would then be fixed at 50%, and can be gifted away from your spouse in your will. You must therefore make a will (or review your existing will), otherwise your spouse may still inherit your share of the property under the intestacy rules and nothing will have been achieved by the severance.

Severance does not however bind a court when deciding how to share the family assets on divorce. It only sets out what should happen if one party dies before a financial settlement has been reached.

7. Checklist of preliminary issues for you to consider/action:

- A referral to a relationship counsellor.
- Discuss the likely costs of your divorce and your entitlement to Legal Funding.
- Mediation.
- The grounds on which you wish to start divorce proceedings and who will pay the costs.
- Your plans for the future: e.g. employment, where you will live etc.
- Residence for the children and future contact with the non resident spouse.
- The value of any property.
- If you or your spouse own property other than the matrimonial home, any CGT liability.
- Prepare a list of your income, capital assets and liabilities, with supporting documents: e.g. Bank statements for the last 12 months, pay slips and accounts and other documents to value an interest in a business etc.
- A visit to the CSA Website to assess the children's maintenance entitlement.
- Ask your pension provider(s) for a Cash Equivalent Transfer Valuation (CETV).
- Your ability to raise and pay a mortgage.
- Alternative properties suitable for your needs if you are likely to leave the matrimonial home.
- Your spouse's ability to raise and pay a mortgage and (if they are likely to leave the matrimonial home) obtain details of alternative properties suitable for their needs.
- Severing the tenancy.
- Making a will or revising your existing will. Without a will your assets will pass under the rules of intestacy. The statutory legacy payable on intestacy to a surviving spouse is set at £250,000 where there are also surviving children and £450,000 where there are no children. Your spouse will also have a life interest in half the balance of your estate.
- Whether you want to put forward proposals for a settlement at the outset or wait until you have seen evidence of your spouse's finances before discussing settlement.
- Ensure that no further liabilities can be incurred by your spouse for which you are liable e.g. credit cards. You can be ordered to repay a debt in joint names in its entirety, even if it was incurred jointly with your spouse.

8. SELF HELP

It is important that you understand that you must not obtain documents or confidential information belonging to your spouse and that there could be significant consequences if this advice goes unheeded, including the risk of a claim by your spouse for:

- I. breach of confidence;
- II. a trespass to goods;
- III. breach of Article 8 (The Right to Privacy) of the Human Rights Act 1998;
- IV. a criminal offence under the Computer Misuse Act 1990;
- V. a criminal offence under the Data Protection Act 1998.

Penalties within the matrimonial proceedings may include:

- I. a court refusing to admit the information obtained;
- II. an order to change solicitors;
- III. an order for you to pay costs

For further information, please do not hesitate to contact: Julian Scrace or Deborah Yeates on 01494 525941 or by email at: julian.scrace@rpj.uk.com deborah.yeates@rpj.uk.com

This guide is based on our understanding of the law as at the time of publication. It is for general information purposes only and does not constitute legal or other professional advice in relation to any particular situation. We would be pleased to advise on specific issue or problem.

