

## Finance and Property on Divorce

### Your questions answered

**Q. *“When are financial and property matters resolved?”***

- A.** Sometimes a financial settlement may be agreed between the parties before the divorce proceedings are commenced.

More commonly, financial negotiations begin after the divorce proceedings have been commenced and they are often not finally resolved until after the Decree Nisi, or on occasions the Decree Absolute, have been pronounced.

Delays can occur if the other party fails/refuses to co-operate or if agreement cannot be reached and an order of the Court has to be sought.

**Q. *“How does the Court get involved in financial and property issues on divorce?”***

- A.** If the parties are able to agree financial and property matters the Court will normally be invited to make an agreed Order known as a **“Consent Order”** recording the terms of the agreement reached between the parties. A Consent Order (unless it is restricted to maintenance provision) can only be approved by the Court after the Decree Nisi has been pronounced.

If it is not possible for the parties to reach agreement readily, one of the parties usually makes a formal application for **“Ancillary Relief”** by lodging an application in **Form A** with the Court. Once this application is made the Court will fix a time table for the case which will require, as a first step, both parties to make a financial disclosure by completing a Financial Statement known as **Form E**. We have prepared a separate fact sheet explaining the procedure in more detail.

**Q. *“How does the Court come to a decision?”***

- A.** In divorce and judicial separation proceedings the Court has very wide powers to vary or adjust the parties property rights or to award maintenance provision for one of the parties. Whilst an equal division of the marital assets may be a starting point, this is not always appropriate. There are a number of factors which the Court is required to take into consideration as follows:

- (a) The income earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future.
- (b) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future.
- (c) The standard of living enjoyed by the family before the breakdown of the marriage.
- (d) The age of each party to the marriage and the duration of the marriage.



Hitchin Office, 7/8 Portmill Lane, Hitchin, Hertfordshire SG5 1AS  
Tel: 01462 628888 | Fax: 01462 631233

Welwyn Garden City Office, Gate House, Fretherne Road, Welwyn Garden City, Hertfordshire AL8 6RD  
Tel: 01707 887700 | Fax: 01707 887701

[www.hrjlaw.co.uk](http://www.hrjlaw.co.uk)

- (e) Any physical or mental disabilities of either of the parties to the marriage.
- (f) The contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family.
- (g) The conduct of the parties but only in so far as it would be inequitable to disregard it.
- (h) In the case of divorce proceedings, the value to either party of any benefit (for example, a pension) which, by reason of the dissolution of the marriage, that party will lose the chance of acquiring.

**Q. *“What will happen to my home on divorce?”***

- A.** It is unlikely that both parties to the marriage will be able to continue to occupy the former matrimonial home indefinitely, one or both of the parties will have to move out. The Court's primary concern is to ensure that any children of the family are provided with a stable and secure home. The Court is also required to take into consideration the factors mentioned above.

**Rented Accommodation:** If the former matrimonial home is rented, either party can apply to the Court for a transfer of the tenancy into that party's sole name. Such an order can only be made following pronouncement of Decree Nisi or the Decree of Judicial Separation.

**Privately Owned Accommodation:** If the former matrimonial home is privately owned by one or both of the parties, then either party can apply to the Court for a **“Property Adjustment Order”**. It may be appropriate for one of the parties to continue to occupy the property, or it may be appropriate for the property to be sold. This will depend upon your own personal circumstances and you will need to seek further advice. You should note that if your spouse is the sole owner of the property you have the right to occupy the property at least until pronouncement of the Decree Absolute, unless the Court orders otherwise but that right of occupation will end when the Decree Absolute is pronounced again unless the Court orders otherwise. **You should inform us immediately if your spouse is the sole owner so that we can take steps to register your right of occupation to protect you against the property being sold or remortgaged without your consent.**

**Q. *“How do we divide the contents of our home?”***

- A.** Normally the contents of the former matrimonial home are divided by agreement between the parties. We advise the parties to discuss arrangements with their spouses if possible with a view to reaching agreement. It is unusual and normally uneconomic for the contents of the property to be the subject of Court proceedings. If it is impossible for you to reach agreement, then you should inform us so that we can take any necessary action on your behalf.

**Q. *“Will I be entitled to maintenance provision?”***

- A.** If there is a substantial difference between the earning capacities of the parties, then the Courts may order one party to make regular maintenance payments to the other (known as **“periodical payments”**) either indefinitely or for a fixed period of time. These payments are subject to review (“variation”) if there is a change in either party's circumstances and terminate automatically on the payee's remarriage.

**Q. *“Will I be entitled to maintenance provision for my children?”***

- A.** Since the introduction of the Child Support Act 1991 in April 1993, the Courts no longer have power to deal with the assessment of child maintenance except in very limited circumstances. If the parties are not able to agree the level of child support, normally the only option open to a parent with care of children is to seek a maintenance assessment from the **Child Support Agency**. Such assessment is worked out according to strict mathematical formulae. The Child Support Agency also has powers to deal with the collection and enforcement of child support.

*NB. Special arrangements relate to people who have an existing Court Order or a Maintenance Agreement during the transitional period up to April 1997. If this applies to you, you should seek further advice if you require an alteration in existing arrangements.*

**Q. “Will I be entitled to any tax or other benefits on divorce?”**

**A.** On permanent separation or divorce both parties become taxable as single parents. A system of tax credits now exists and we would recommend that you should check whether you are eligible for such payments especially if you are caring for children or have a low income. You can check your eligibility by accessing the government web site on <https://www.taxcredits.inlandrevenue.gov.uk>.

If you are not working you may also be entitled to Income Support or Job Seekers Allowance.

**Q. “Should I consider making a fresh Will?”**

**A.** Yes. It is very important to consider the possibility of updating your Will or making a Will if your marriage breaks down. If you are the joint owner with your spouse of the former matrimonial home it is likely that the property is held by you as “joint tenants”. If this is correct, the property will pass automatically to the survivor in the event of the death of one of the joint tenants. It is a relatively simple procedure to “**sever**” the joint tenancy so that you hold the property as “tenants in common” whereupon both parties can leave his or her interest in the property to whoever they wish. If you do hold the property as joint tenants and you wish to make a Will you should explain the situation to us and we will take the necessary steps on your behalf.

Even if you do not have any substantial assets you may wish to make a Will in order to appoint a guardian to look after your children in the event of your death. Again we can advise you about this but you should bear in mind that in normal circumstances, unless the Court is making a specific Order relating to your children’s residence, the appointment of such a guardian will not take effect whilst the surviving parent remains alive. Should you have any further queries about the possibility of making a Will, please let us know and we will be happy to advise you.

**Q. “How much will it all cost?”**

**A.** This firm does not undertake publicly funded (formerly known as Legal Aid) work. Although we may be able to quote you a fixed price for dealing with any divorce proceedings themselves, we, in common with most other solicitors, will charge you according to the amount of work carried out on your behalf in resolving issues regarding property, finance and children. This work will include not only attending on you, but also dealing with correspondence, telephone calls and preparing and considering documentation. Whilst it is impossible for us to give a firm quotation for the cost of this work, we will ensure that you are advised at or immediately after your first interview as to the hourly charging rate of the person dealing with your case and we give you an idea of the likely costs involved. Arrangements will be made either for you to be billed on a regular basis as the case progresses or for you to make a regular contribution towards your costs and any disbursements as your case progresses.

***This fact sheet is intended as a general guide only. If you have specific queries not covered in this fact sheet please ask for further advice.***