

FINANCES ON DIVORCE

When you separate, divorce, or end a civil partnership, you need to agree on separating finances such as property, pensions, savings, and investments. Various factors need to be considered.

WHAT AM I ENTITLED TO?

This is very much dependent upon your individual circumstances. The starting point for the division of assets accrued during the marriage, called “matrimonial assets”, is an equal division (50/50). This is the benchmark the court will assess when considering whether a settlement reached by agreement or through the court is justified. However, a departure from an equal division may be necessary due to various other factors that are considered when assessing needs and other relevant factors.

Generally, the two most significant matrimonial assets are the family home and pensions. The family home is usually considered a marital asset and divided equally, even if owned or purchased by one party before the marriage. Likewise, other property or money held in one party’s name, but accrued during the marriage, is generally considered a matrimonial asset.

Anything that you or your partner owned before marriage (or after if it were purchased using entirely non-matrimonial funds) is considered “non-matrimonial assets”. The exception to this is where non-matrimonial assets have been used or merged into the pot of matrimonial assets, for example, an inheritance used to pay off the mortgage on the family home.

Typically, non-matrimonial assets kept separate from other matrimonial assets will be excluded in a divorce settlement and “ring-fenced” from division. However, in all cases, the needs of both parties will be carefully considered. If the matrimonial assets are insufficient to meet those needs, it is unlikely that non-matrimonial assets will be excluded. These needs can be generously interpreted.

HOW ARE ASSETS SPLIT?

Whilst the aim is to achieve a 50/50 split, this is often not performed due to various circumstances. Meaning one party receives a more significant portion of the matrimonial assets.

Several factors must be considered in the Matrimonial Causes Act 1973 and the Civil Partnership Act 2004 when dividing assets

upon divorce or dissolution. The court’s first consideration is the welfare of any children involved.

These factors include the income and capital resources available to both parties, either existing or reasonably foreseeable, as well as the financial needs of each party. Other factors include the family’s standard of living, their ages, the length of the marriage, and any disabilities.

The income of both parties is considered against the financial responsibilities they each have. Also considered are the contributions that have already been made to the marriage or contributions that need to be continued as well as any benefit either party will lose as a result of the divorce, e.g. a spouse’s pension rights.

Finally, if the conduct of either party to the marriage was so severe that it would be unfair to disregard it, this will be taken into account. But unfortunately, it is notoriously tricky and rare to run a conduct case successfully.

Where possible, the aim is to achieve a clean break between the parties, so they are no longer financially dependent on one another. The expectation is that each party to the marriage should try to be as self-reliant as possible with their income. When this is not possible, the higher earner may need to pay ongoing maintenance to the other. This generally ends once the receiving party remarries (or cohabits) or a further court order is made.

HOW DOES A COURT DECIDE WHAT IS RIGHT?

The court follows the legal principles from legislation and case law in making its decision. However, each judge has the discretion to do what they perceive to be appropriate based on the evidence in each particular case. This means the precise outcome of financial court proceedings can be quite challenging to predict.

In certain circumstances, an agreement made before or during the marriage (a pre-nuptial or post-nuptial agreement) can also significantly affect what the court decides.

This guide is intended to be general information and not to be relied upon as legal advice. This is a complex area, and each case is different. We would suggest you contact us to obtain complete and proper legal advice.

For more information, please see our website www.kjsmith.co.uk/our-services

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