

# Financial considerations on divorce or dissolving a civil partnership



Our aim is always to negotiate an agreement on the financial aspects of your separation. But sometimes that's just not possible, and in this situation you'll need to apply to the court.

Either one of you can apply for an order and the court has wide powers in deciding how to divide up your assets. For example, the court can:

- + Sell assets and distribute the proceeds
- + Transfer assets, including your pensions, between you
- + Reverse the sale of assets
- + Order one of you to pay the other a lump sum or regular maintenance

When deciding how to divide your assets, the court considers a range of factors, including:

- + The standard of living before separation
- + Both parties income, earning potential, property and other financial resources which you have, or are likely to have in the future
- + Both of your financial needs and responsibilities, both now and in the foreseeable future
- + The contribution made by either party, both now and in the future, to the home or by caring for the family

To assess what would be a reasonable financial settlement, you'd need to supply financial information, including, but not limited to, the:

- + value of your home and any other properties that either of you own;
- + amount outstanding on your mortgage;
- + surrender value of any endowment or life insurance policies.

## Your family home

With your home, the court has three main options:

- + Order the sale and distribute any profits between you both

- + Transfer the property into one of your names in return for a lump sum payment or transfer of another asset to the other person
- + Order for the property to be occupied by one party, usually the party looking after the children. The other party would receive their share at an agreed point in the future.

The court won't normally order the sale of your property whilst it is needed as a home for any of your children unless there is enough money to be rehoused.

This means that the person not looking after the children may need to wait until the children have left full time education for their share in the value of the home. Each case is however decided on its facts.

## Maintenance between partners

The court can order that one of you pays maintenance to the other.

If there are no children, maintenance might not be considered unless there's a large difference in your incomes.

## Clean Break

If spousal maintenance is not appropriate, then it is standard practice to have a Clean Break Clause within the final Order. This prevents either of you from having any further claim against the other person or their estate in the future.

## What is the court procedure?

The court procedure can take up to eighteen months, but normally settles within this time frame.

When an application is made, the court will fix a **first appointment**.

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You will both need to complete a financial settlement called a Form E – this is a detailed document for recording all of your financial assets and liabilities.

Your **Form E** will be exchanged with your former partner at least **7 weeks** before the first appointment. We'll go through it with you in order to:

- + Identify any questions which need to be asked about the financial circumstances disclosed by Form E
- + Determine whether any documents are needed from your partner to support what they are saying about their financial circumstances

## At the first appointment

The first appointment is conducted with the objective of defining the issues and identifying what additional information is needed to resolve the case. We will try and agree directions in advance of the hearing to save costs. If it is possible to agree directions in advance, we may be able to avoid the hearing altogether. If it's agreed that directions cannot be reached, the court can make directions about obtaining valuation of assets, obtaining expert evidence and the evidence that needs to be produced by both parties. The court may make directions about the valuation of assets, obtaining expert evidence and the evidence that needs to be produced by both parties.

A date will be fixed for the Financial Dispute Resolution Hearing, or FDR and, if there were any questions to be answered, or any documents needed, a timeframe will be set for providing responses to those questions.

## The FDR hearing

The FDR is an opportunity to meet at court and negotiate a settlement.

The judge will often give an indication of the most likely outcome based on the facts available at that time.

However, it isn't binding and a different judge at the final hearing may come to a different conclusion.

If you're able to negotiate an agreement and the case can be settled at this stage, the court will make an order immediately. Otherwise, a date will be fixed for the final hearing.

It is sometimes possible to have the FDR heard at the first appointment, but this depends on available court time and the agreement of the Judge.

## The final hearing

At the final hearing, you'll both set out your proposal for the order you think the court should make. The judge may hear evidence from you both. The court procedure is such to encourage agreement and settlement. Both parties are obliged to be realistic about the financial aspects of divorce and to make realistic offers.

If either party fails to engage in the negotiations or fails to comply with the court's directions, they may be penalised by having to pay the cost of proceedings for both sides. These costs can be substantial.

## Likely timescales

The timetable set is strict and the court has the power to penalise you if you fail to comply with its timescales.

To avoid this we'd advise you to make offers at an appropriate time. Likewise, if an offer is received from the other party, your solicitor will advise you whether you should accept it.

If an offer is made and accepted, in most circumstances it'll be binding on you.

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## What if our property is jointly owned?

If your family home is in joint names, you're both owners and have equal rights to occupy the property.

There are two ways to own property together:

- + Tenants in common, or
- + Joint tenants

Most couples hold the property together as joint tenants – this means that if one of you dies the property automatically goes to the surviving partner.

As joint tenants, you're deemed to own the property in equal shares.

If your property is owned as tenants in common you'll each have a distinct share in the property. This means that if one of you dies, their share will form part of their estate.

You'll need to check whether you hold property together as joint tenants or tenants in common. If you're joint tenants, you may wish to sever the tenancy so that you hold the property as tenants in common.

That way, should something happen, your share will be distributed via your Will and won't automatically pass to your former partner.

You can sever the joint tenancy by writing to your partner and giving notice. You'll need to register your letter or notice with the Land Registry. You should also make a Will if you haven't done so already. These are steps that your lawyer can assist you with.

## What if my home is in my former partner's name?

We can advise you as to whether you have any interest. To protect you we would normally register a home rights charge or caution against the property.

## What about joint accounts and debts?

If your name appears on a joint account, such as a loan or credit card, you are known as jointly and severally liable for that debt.

This means that the creditor can sue both of you or each of you individually. That's why it's important that you notify the creditor that you've separated so that the account can be frozen. It also stops your former partner from running up further debt in your name.

You'll need to exercise caution when it comes to accounts that are used to pay bills. However, in most cases, we would advise that you cancel or freeze all joint credit card accounts. If you are not sure, please contact one of our team to discuss your situation.

## Further information

If you need to speak to a family solicitor about financial matters, call **0117 325 2929** or visit [barcankirby.co.uk](http://barcankirby.co.uk).

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