

A Short Guide to Ancillary Relief

The settling of financial matters on divorce is called Ancillary Relief. The Law in this area is very flexible to enable Courts to achieve fairness, depending upon the individual circumstances of each case. Invariably this is the most contentious aspect of any breakdown in a relationship. Every effort is normally made to try and assist clients in reaching a negotiated settlement to avoid the necessity of Court Proceedings. If however agreement cannot be reached then an application for what is known as “Ancillary Relief” is made to the Court and the Judge will be invited to consider what would be a fair distribution of the assets between the parties. The Court and indeed your Legal Advisor has to consider various matters including all of the circumstances of the case to decide what is fair and reasonable to include :-

- The welfare of a child of the family
- The income earning capacity of property and the resources of each person
- The financial needs obligations and responsibilities of each person
- The standard of living enjoyed by the family before the breakdown of the marriage
- The age of each person and the duration of the marriage
- Any physical or mental disabilities
- Contributions made by each person to the welfare of the family, including looking after the home and bringing up children
- The conduct of each person but only if it is so bad that it would be unfair to ignore it
- Any serious disadvantages to either person which would be caused by ending the marriage

Because the Courts have a wide discretion in applying the Law it is better to avoid the uncertainty of a Court Hearing. Most people are able to agree how their finances should be split with each having the help of a Solicitor to advise on what might be a fair division, highlight the options for achieving this and negotiate on their behalf.

Mediation Services can also help couples reach agreement on key issues and a Solicitor can then advise on the implications of any agreement and convert it into an Order recognised and enforceable by the Courts.

A starting point must always be a full and honest disclosure of each person’s personal assets to ensure that everything is included in the “pot” to be shared. Financial arrangements can be settled through a “clean break” which ends the financial obligations between the couples if



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this is appropriate. Some form of maintenance payments may, however, be more suitable. These can be ongoing or for a fixed period of time. Even where there is a clean break agreement maintenance will still be payable for any dependant children.

Often a family's main asset is the family home. Given that the needs of any children are a first consideration it will be important to make sure that a suitable home is maintained for them. It may be that the family home could be sold with the proceeds divided between the couple (not necessarily in equal shares). The property could also be transferred to one spouse with the other receiving a greater share of other assets. A less common approach could allow one person to stay in the house with the other keeping an interest in the property, receiving their share when the property is sold. This might be when the youngest child has finished full time education.

The Law has also changed to allow a Pension Fund to be shared on divorce. Pension Sharing will not be appropriate in all cases and where it is an option the Fund will not always be divided equally. This is a complex area and it is likely that specialist financial advice could be needed on how sharing can be achieved in each individual set of circumstances.

Please contact Barbara Kemp or Jenny Lapwood if you require any further assistance or information or arrange an appointment to call in. Either will be happy to discuss matters with you and give you an idea as to the costs involved in relation to Ancillary Relief Proceedings.

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