

Financial And Property Claims Against A Spouse Or Partner

Introduction

In the majority of cases when relationships break down, there are financial consequences that have to be addressed. Those can include an ongoing liability for regular payments towards the upkeep of the former partner or a child (“periodical payments”); a division of available capital by payment from one partner to the other (“lump sum payment/s”); transfer of assets such as insurance policies or belongings; a change in the arrangements for the occupation and ownership of properties (“property adjustment”); and alteration of pension arrangements. Following a separation or divorce of married people, the court has very wide powers to deal with these matters; those powers are much more limited when a couple have not been married. (In both cases, however, the matter of child maintenance is almost exclusively in the hands of the Child Support Agency and not the court.)

Avoiding court proceedings

Disputes about finances and property can be very expensive and it will always be our intention as far as possible to avoid unnecessary court applications and hearings by reaching an agreement at as early a stage as we can. However, we can only set out to achieve an outcome which is reasonable and is satisfactory for you if we have the full financial details of both you and your partner. Accordingly, we shall ask you to let us have details of your income, expenditure, debts, savings, other assets, pension arrangements and properties which you own or rent; and as many such details as you can give us about your former partner’s circumstances. It will save time and cost if you can put this information together for us as soon as you can, with supporting documentary evidence where this is available. With the help of that information, we can advise you as to the likely outcome of any court application and the sort of proposals that might be put forward in the hope of achieving an agreement.

If an agreement can be reached, we will almost certainly advise you to ask the court to make an order reflecting the terms of that agreement to safeguard your interests. Such an order can be obtained in divorce or separation proceedings with limited expense.

Factors affecting the outcome of negotiations or court proceedings

In disputes between unmarried couples, the court will look particularly closely at any documentary evidence which sets out the interests of the couple in any jointly owned assets and, to some extent, the purpose for which assets have been acquired and the proportion in which financial contributions have been made.

In disputes between married couples, the court has a much wider discretion to alter the interests of each party in any asset and to direct payments by one to the other. As it decides how to exercise this discretion, it will take into account a wide range of issues, starting

particularly with the needs of any minor child, but also including for each party such things as income, present and future earning capacity, financial resources, present and future financial requirements and responsibilities, past standard of living, the duration of the marriage, ages, contributions to the family, physical or mental disabilities, any benefits lost through the dissolution of the marriage and (in extreme cases only) conduct. We will advise you how these factors might affect the outcome of any claim made by or against you.

The matrimonial home

You should understand that a court can make orders which deal separately with the future occupation and with the ownership of a house. The fact that you have or obtain an interest in the ownership of a property does not necessarily mean you will be able to realise that interest or occupy the house. It is important to appreciate too that the need of any minor children to be provided with a home will have a significant impact on how a court decides to deal with any property ownership or occupation rights.

At an early stage, it may be necessary to take some steps in your interests if a house is owned in your partner's sole name or in joint names:

- In your partner's sole name. We will normally be able to register your right to occupy the property in the short term while steps are being taken to deal with the longer term ownership and occupation of the property. That will help to protect your rights as against your partner, but not necessarily against any mortgagor.
- In joint names. Many homes are owned by couples on the basis that, on the death of one owner, the property passes to the survivor regardless of the provisions of any will. If this is your situation, it may be appropriate for a notice to be given to your partner changing this arrangement, thus ensuring that your interest in the property passes in accordance with the terms of your will, rather than automatically to your partner. Please ask if you require further advice about this.

This note is only intended to provide a brief introduction to financial and property issues arising from a breakdown in a relationship. We will give more detailed advice appropriate to your circumstances as your case proceeds. If there is any issue about which you require particular advice, please ask the solicitor