

Dividing Assets After Divorce

Making good decisions when you are in the midst of life changing events such as relationship breakdown isn't easy, particularly when you are trying to balance the physical separation and the needs of the family with what can sometimes be difficult decisions about the best time to divide assets.

It is clear that we all deal with things differently. Some want a speedy resolution and to be able to move on with their lives. Others leave things for as long as possible choosing not to address the sometimes tricky issues of who has what, and put it off for some other time.

Financial discussions are usually best undertaken at an early stage to avoid the situation where asset values change dramatically over any lengthy period of time and this could result in less being received than might be expected. In these uncertain financial times, adding delay and the variables that arise from time passing can be an added problem that could be avoided.

The Court's approach in looking at how assets are divided is based on their value at the time that the issues are addressed rather than at the point of separation. This is an important reason for sorting your settlement out sooner rather than later, as post separation changes in asset values can still be taken into consideration.

A financial settlement is not concluded until you have the security of a final Order from the Court which sets out both parties obligations to the other, how the assets will be divided and whether all claims are concluded. The Court can decide if there should be on going obligations between a couple such as maintenance and for what period or whether the settlement is intended to provide for a clean break, meaning that neither party can look at reviewing matters again in the future.

To enable financial discussions to take place, each party needs to provide full and frank disclosure of their financial circumstances to the other, whether accrued after separation or not. Everything needs to be disclosed and it is then a matter for the negotiations or for the Court to decide, whether it is shared in one way or another taking all factors into account.

Whilst the starting point is equality, that may not be the end result taking all factors into account. There are no black and white rules and outcomes. The Court's first consideration is that of need. It uses its discretion to look at what would be a fair division of the assets to meet the needs of the respective parties and any children of the family.

Ring fencing any post separation accrual of assets is a secondary consideration for the Court, to be looked at after the basic needs of the parties are considered.

Post separation accrual can be:-

- Money that arises from normal market activity – a `passive` increase. This could be value that has been added due to increases in property values, pensions, share values. The Court can take the approach that this should be included within the assets to be divided.
- Money that has come about due to one party starting a new venture after separation that is not connected to the assets of the marriage. This may be ignored by the Court if it was derived entirely after separation and from one party`s singular efforts and expertise. It falls within the Court`s discretion to consider what would be fair.
- `Active` economic growth of an asset which relates to something that a party to a marriage has done to improve the value of the pre-existing assets. Again the Court would need to carefully consider the specific facts of the case and use its discretion.

Addressing the issues sooner rather than later is therefore a wise move to avoid the risk of the asset values changing considerably and leaving too much to fall into the Court`s discretion, which creates uncertainty in itself. Setting out the terms of agreement into a Court Order provides the confidence and satisfaction that both parties are legally bound and can move on with their lives with a firm base from which to do that.

If you need any advice or help from our Specialist Team, please call our number.