

Factors to be considered when deciding the financial settlement upon divorce or dissolution

Overview:

It is often difficult to decide, upon a divorce, who should get what from the available financial resources. There is guidance set out in the Matrimonial Causes Act 1973 which provides a list of factors that need to be taken into account when deciding how to distribute the finances.

Legal advisors, Solicitors, barristers and the Court will all consider the factors set out in the Matrimonial Causes Act 1973 when determining what a “fair financial settlement” would look like for a divorcing couple.

This fact sheet will detail what each of the factors in the Matrimonial Causes Act 1973 are and will provide a useful guide when considering your own circumstances.

Section 25 Factors of the Matrimonial Causes Act

Welfare of a minor child of the family who has not attained the age of 18.

The overriding factor in all divorce cases is the consideration of children under the age of 18 and how their needs and welfare will be met. This can often be a decisive factor in most cases.

The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future.

The “needs” of either party is also considered as an overriding factor, as it is often paramount that the assets are distributed as such to maintain a roof over either parties’ head. This can of course also coincide with the needs of the children as set out above.

The income, earning capacity, property and other financial resource which each of the parties to the marriage has, or is likely to have in the foreseeable future. This includes in the case of earning capacity, any increase in that capacity which it would be reasonable to expect a party to the marriage to take steps to acquire.

This means that both parties current income will be considered and also what their future income will be. For example, if one party is returning to work after caring for the children, consideration would be given as to the likely income.

The standard of living enjoyed by the family before the breakdown of the marriage.

The lifestyle that the parties had during the relationship will be a consideration, however, it is in some cases not possible for the same standard of living to be maintained where possibly one income has to support two households for example. Parties will be expected to “cut their cloth accordingly”.

The age of each party to the marriage and the duration of the marriage.

The age of the parties will be relevant in respect of the needs of the parties if they are coming up to retirement, mortgage raising capacity and earning capacity. The duration of the marriage is considered whereby if it is a long marriage there is a presumption of equality across all assets, or if it is a short marriage there is case law to suggest that the parties are instead returned to the financial position they were in before they started their relationship. It is important to note that the Courts will consider cohabitation which has ran straight into marriage as the “total duration of the relationship” when considering the length.

Any physical or mental disability of either of the parties to the marriage.

Again, this will be considered in light of earning capacity, needs for housing and income.



The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family.

In some cases there may be a significant contribution which was made prior to the relationship either acquired by efforts before the relationship or inheritance for example. Or contributions after the parties separated. These factors will be considered in light of any financial settlement.

The conduct of each of the parties, whatever the nature of the conduct and whether it occurred during the marriage or after the separation of the parties or (as the case may be), dissolution or annulment of the marriage, if that conduct is such that it would in the opinion of the court be inequitable to disregard it.

It is a high threshold to overcome for a parties' conduct to have any effect on a financial settlement. For example, a parties' reason for the divorce be it adultery or unreasonable behaviour is highly unlikely to have an impact on the distribution of the assets. If one party has wasted significant amounts of the available assets in the marriage, this would only be considered if the expenditure was "wanton and reckless". A parties' actions during financial remedy proceedings (if they are issued) may be taken into account if there has been non-compliance, however, this is only likely to result in the other party receiving a contribution towards their legal costs rather than a larger share of the available assets.

In the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

The main consideration in light of this factor is the loss to either party of any potential pension benefits on retirement.

Our divorce solicitors here at McAlister Family Law will always have the above checklist on their mind when advising clients as to their options in respect of a financial settlement.



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