FAMILY LAW

Finances: Your options on divorce or dissolution

McALISTER FAMILY LAW

Overview

There are now a number of options available to couples when trying to decide how to divide assets, ranging from direct negotiations with one another to court proceedings. This factsheet explains the various options and procedures. Regardless of which option you choose, you and your spouse will need to disclose your assets, income and liabilities to determine a settlement. This is called producing your disclosure.

The expression 'spouse' in this factsheet will also mean civil partner. The various options apply for couples that are undergoing divorce or dissolution proceedings.

Voluntary Disclosure

This involves both spouses voluntarily disclosing their assets, income and liabilities through the completion of a financial statement often known as a 'Form E'. When completing this document, you will also need to attach certain documents, which can include (but not limited to) the following:

- estate agent valuations for avny property you own
- a mortgage statement to confirm the balance outstanding and any redemption penalties
- bank statements covering the last 12 months
- statements to confirm the value of any investments or life insurance policies
- a cash equivalent transfer value for any pensions
- documentation to confirm any liabilities you have
- your P60 and last three wage slips.

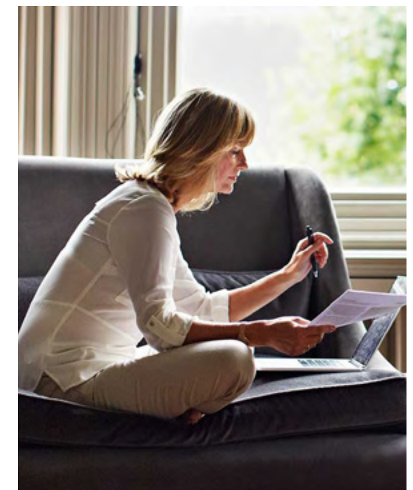
Once you have completed the Form E it will be exchanged with your spouse's Form E and if further disclosure is required then this can be requested. In some cases further disclosure is not required and you can proceed to negotiating a settlement.

If you are able to reach an agreement, the terms of the agreement will be recorded in a legally binding document called a 'consent order.' This document is signed by both you and your spouse as well as your legal representatives (if you are both represented) and will be lodged with the court upon or after the pronouncement of Conditional Order. The consent order will be accompanied by a document called a 'Statement of Information,' which provides a summary of your disclosure as your Form E will not be lodged with the court if you adopt the voluntary disclosure process. In most cases the court will approve your consent order without the need for you to attend court. Once the court returns your consent order, you have a concluded agreement which can be enforced should any of the terms of the order be breached.

Mediation

This involves you and your spouse attending meetings together with a trained mediator. The mediator will assist you to complete your disclosure and will then help you to negotiate a settlement. The mediator is impartial and will not be able to advise you individually.

Although solicitors will not be present at the mediation sessions you can consult with your solicitor throughout the process.



You can also discuss other issues (such as the arrangements for the children) at mediation.Any discussions you have or any agreements you reach at mediation are what is often known as "without prejudice." This means that you are not bound by the agreement until you have had an opportunity to obtain advice and formal acceptance is provided. If an agreement is reached in mediation you will still need to place this in a consent order, which is then lodged with the court as detailed in the voluntary disclosure process.

Collaborative Law

This involves you and your spouse instructing solicitors that are trained in collaborative law. You and your spouse will attend a series of meetings with your solicitors and decide what will be discussed at each meeting, which is similar to setting a schedule or timetable of the process. If you decide to adopt the collaborative process then you will be required to sign a participation agreement, which will include a commitment to limit the court's involvement merely to the stage of the approval of a consent order. In the event that an agreement cannot be reached and the process breaks down, both spouses will have to instruct new solicitors and adopt another method of settlement detailed in this factsheet.

The court process

In some cases, court proceedings may be necessary, which is usually when you or your spouse are not prepared to provide details of your income, assets and liabilities. It is also useful in cases where your spouse simply ignores correspondence or requests for disclosure. It can also be necessary when you have already tried all other options and you simply cannot reach an agreement. This process will normally involve a series of three hearings at court.

An application for the court to determine a financial settlement cannot be made unless divorce or dissolution proceedings have already been commenced. It is important to note that all applications to determine a financial settlement can only be issued in court once a Mediation Information and Assessment Meeting (often known as a MIAM) has taken place by an authorised mediator. There are some circumstances in which a MIAM will not be required but it is important to discuss this with your solicitor to determine whether you would fall under these criteria.

THE STEPS INVOLVED IN THE COURT PROCESS ARE AS FOLLOWS:

Issuing an application at court

The process is started by sending a Notice of intention to proceed with an application for a financial order (often known as a Form A) to the court in which divorce or dissolution proceedings were commenced or making an online application via the portal. Once the application has been issued the court will set a timetable for your case and list the matter for the first court hearing known as the First Appointment. The court will send you and your spouse the sealed Form A with a Notice of First Appointment which will contain details of the date and time of the First Appointment, which will be between 12 and 16 weeks from the date of filing the Form A. The Notice will also provide a timetable in which certain documents will need to be exchanged and filed with the court.

The person who has issued the application is known as the Applicant and the spouse receiving the application is known as the Respondent.

Exchange of financial statements (Form E)

The first date to comply with is the filing and exchange of financial statements as described in the previous voluntary disclosure section of this factsheet. Once the form has been exchanged you will have the opportunity of considering your spouse's Form E and if necessary we will prepare a questionnaire to confirm what further information or documentation you require from your spouse.Exchange of First Appointment documentation

The next date to comply with is the filing of your first appointment documentation. This includes:

- the questionnaire setting out the further disclosure you require
- a chronology
- a statement setting out in summary form the issues between you and your spouse
- confirmation of your legal costs to the date of the first appointment (Form H)
- confirmation as to whether or not you will be in a position to use the First Appointment at the Financial Dispute Resolution hearing (Form G).

The First Appointment

Often the First Appointment hearing is dealt with "on paper" where neither party has to physically attend the hearing. Instead, the parties and their representatives agree the directions sought from the Court to progress the application prior to the hearing. If the parties cannot agree the directions or other issues arise, an attended hearing may be required.. The aim of this hearing is to define the issues between you and for the court to make any necessary directions to help progress your case. Directions can include the date by which you must respond to each other's questionnaire, the obtaining of a valuation for your property or the obtaining of experts' reports, such as from an accountant, doctor or actuary.

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Financial Dispute Resolution hearing (FDR)

This hearing is often known as a FDR. The purpose of this hearing is to try to settle your case. At least 7 days before the hearing the applicant must file details of all offers of settlement and responses to them. You will be required to attend at the court at least one hour before your hearing to enable negotiations to take place. If you are able to agree terms of a settlement, the terms will be drafted in a consent order and approved by the Judge there and then. If you have not managed to agree terms of settlement, the Judge will listen to the issues between you and then give an indication of their view of your case and what the order could be if you pursue your case to a final hearing. Once the Judge has given their indication you will be given more time to negotiate. If, however, an agreement still cannot be reached the Judge will give directions to progress your case to a final hearing. This Judge is then prohibited from hearing the final hearing.

Final hearing

Your case will usually be listed for a day or more depending on the complexity of the issues. At least 14 days before, the applicant must file and serve an open statement setting out concise details, including amounts involved, of the orders that they are asking the court to make. At least 7 days afterwards the respondent is required to file their open statement.

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The applicant's solicitor will be responsible for preparing the bundles of evidence for the court hearing. The bundle will need to include an up to date chronology, statement of issues and the Forms E. Once the evidence has been heard your barrister will summarise your case for the Judge and highlight any relevant information given in evidence. The Judge will then give their Judgement and the terms of their order. If appropriate the Judge will then hear any applications for costs.

Costs orders

The general rule is that the court will not make an order requiring one spouse to pay the costs of another unless it considers it appropriate to do so as a result of the conduct of either you or your spouse. Conduct can include the failure to comply with the court timetable or rules and failure to accept an offer which is the same as or better than the financial order made by the Judge. ny open offers to your spouse will also be taken into account and if you have achieve a result the same as or better than the that offer the starting point is that you should be able to claim back a portion of your costs.

Arbitration

Family arbitration is a form of private dispute resolution in which you and your spouse will appoint a fair and impartial family arbitrator to resolve your dispute.

The process is started by you and your spouse choosing an arbitrator that you would like to deal with your matter. You and your spouse will then complete an Application for Family Arbitration (known as Form ARB1). By signing the ARB1, you are both agreeing that you will be bound by the decision of the arbitrator. The arbitrator will then send a formal letter of acceptance and the arbitration process will begin.

It is a matter for you and your spouse to agree how the arbitration process will work, for example which issues you wish to be determined and the extent of the arbitrator's powers. Arbitration will usually follow a process similar to the court process however it may be that you and your spouse can agree that certain matters will be dealt with on a documents only basis rather than by way of hearing.

If you and your spouse cannot reach an agreement between you then the arbitrator will make a decision which will be put to you and your spouse in writing. Once the arbitrator's decision is received, this will need to be approved by the court and an order made. Once a court order is made, it will be binding on you and your spouse and can be enforced should any of the terms of the order be breached.

The arbitration process will usually be completed quicker than the standard court process because, subject to the arbitrator's availability, you and your spouse will be able to agree deadlines and hearing dates between yourselves to meet the specific needs of your case.

Direct Negotiations

If you and your spouse are able to reach an agreement directly with one another then we can be instructed to merely draft the consent order and relevant documentation to lodge with the court. You must however be aware that if you select this option without full disclosure being provided we will not be able to advise you on whether the terms of the order are appropriate. You therefore risk entering into an agreement that is not fair and reasonable.

What if you do nothing?

Only the court can dismiss a claim for a financial order. Therefore, until such time as a 'clean break order' has been made by the court, it is open to you or your spouse to make a claim. Even if there are no assets at the time of the divorce or dissolution it is still advisable to enter into a consent order to ensure that a future claim cannot be made.

What if you are already divorced or your civil partnership has been dissolved?

You may not be entitled to make a claim for a financial order if you have remarried or formed a civil partnership. However, if an application has been made before the remarriage or forming of a civil partnership but proceeded with afterwards there is no bar. It is therefore important to check the divorce or dissolution application carefully. Your remarriage or civil partnership will however be relevant regarding the financial settlement that you receive. Applications on behalf of children are unaffected.