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A Guide To Financial Proceedings Within Divorce

1. Mediation And Negotiation

It is always advisable to discuss matters in an amicable and conciliatory manner in order to try and reach a financial settlement with your spouse by agreement. This will result in both parties incurring considerably less in the way of costs than if the matter has to proceed through the court process.

An alternative remedy to court proceedings is mediation. In mediation, trained mediators aim to help separating or divorcing couples resolve disputes in relation to children or financial matters by agreement between them. Mediation will usually take place over more than one meeting. Fairbrother and Darlow can assist in referring parties for mediation.

If you and your spouse are able to reach an agreement, then Fairbrother & Darlow can prepare a formal and legally binding document embodying the terms of the agreement. This can be by way of a Deed of Separation or in the form of an order that can be sent for the approval of a judge. If you are not able to reach an agreement then it may be necessary for you to make an application to the court in order to resolve matters.

2. Orders That Can Be Sought

Depending upon the financial circumstances of the parties a court can make various financial orders including maintenance orders; orders for the sale or transfer of property; lump sum orders and pension sharing and pension attachment orders. Generally, a court is no longer able to make orders for child maintenance. Child maintenance is usually dealt with through the Child Support Agency.

It is important that a person should seek legal advice about the type of financial orders that it may be appropriate for a party to seek in any particular matter.

3. Court Proceedings

The information set out below indicates the procedure to be followed in most proceedings that are instituted in order to resolve financial matters. However, there are occasions when it would be appropriate to proceed in a different way, or for different orders to be sought.

If at any stage of the proceedings set out below, matters are resolved by agreement then a court order can be prepared and sent to the court for the approval of the District Judge. This order will then become binding upon both parties. If either party later fails to comply with the terms of the order then proceedings can be instituted in order to enforce the terms of the order.

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4. Issuing A Court Application

If financial matters cannot be resolved by agreement it may be necessary for court proceedings to be instituted. Financial proceedings are generally referred to as “ancillary relief proceedings” as they are proceedings that are undertaken ancillary to the divorce proceedings.

In order to institute these proceedings an application is lodged at the court with the appropriate court fee. This application is issued by the court and a directions order is made setting out how the case is to proceed. This application and directions order is served upon the other party, who is known as the “Respondent”. These directions usually require both parties to file and exchange sworn financial statements known as a “Form E”. These are to be supported by documentary evidence.

In the court proceedings both parties are required to make full and frank financial disclosure of their financial positions. If this is not provided, financial questionnaires can be prepared requesting further financial documentation from the other party. In addition, further documents will be prepared setting the issues ahead of the first hearing.

5. First Appointment Hearing

If matters cannot be resolved by agreement then the case will proceed to a first hearing, known as a “First Appointment” hearing. At this hearing the District Judge will consider the financial documentation that has been filed by the parties and decide if there is any further documentation that needs to be disclosed. If so, orders will be made for the disclosure of this further information. If this is not necessary the District Judge may immediately proceed to a Financial Dispute Resolution Hearing.

6. Financial Dispute Resolution Hearing

If financial matters cannot be resolved at the First Appointment Hearing then the matter will proceed to a Financial Dispute Resolution Hearing before a judge. At this hearing the parties will outline their positions to the judge who will usually give an indication as to what orders he or she considers may be appropriate in order to resolve financial matters. All offers to resolve matters that have been made by the parties will normally be disclosed to the judge.

7. Final Hearing

If matters are incapable of resolution then the matter will proceed to a final hearing where the District Judge will make a final order in respect of financial matters. This hearing will not

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be before the same judge who has heard the Financial Dispute Resolution Hearing. At a final hearing the court will consider the financial documentation filed by both parties and, will generally hear evidence on oath from both parties. Each will then be cross-examined by the legal representative for the other party.

The court will also hear submissions on behalf of both parties before the judge will make a final order that will be binding upon both parties. If one or other party is dissatisfied with the order, consideration can be given to the possibility of appealing against the terms of the order.

8. Factors To Be Taken Into Account By The Court

When considering the most appropriate orders to make in relation to financial proceedings a court has to have regard to all the circumstances of a case. In particular, a court has to take into account a number of factors that are set out in Section 25 of the Matrimonial Causes Act 1973, these factors include:-

- The income, earning capacity and mortgage capacities of each of the parties;
- The parties' financial needs, obligations and responsibilities;
- The standard of living enjoyed by the parties;
- The parties' ages and the duration of the marriage;
- The physical or mental disabilities of the parties;
- The parties' respective contributions to the marriage;
- In exceptional cases only, the parties' conduct;
- Any loss of benefit, whether financial or otherwise, as a result of the divorce;
- The welfare of a child(ren) of the marriage.

If you would like any further information about financial matters, or in relation to mediation, please contact Fairbrother & Darlow (Tel: (01344) 420808 Email: info@fairbrotherdarlow.co.uk)