



A guide to dividing assets

With legal guidance, it is possible to jointly make beneficial decisions about your finances and assets to move on with certainty.

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Dividing assets and agreeing finances upon divorce

There are many myths surrounding divorce and what happens to the family home, the distribution of assets and payments for child maintenance. There is no standard formula for calculating the appropriate financial provision on divorce, so it is imperative to seek legal advice to achieve financial certainty.

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1. Where do you start?

The family home is often central to the negotiations and a good place to start working out how the future will look. If there are children, it is common for one parent to want to remain in the home with the children to try and maintain continuity with schools, friends etc.

It is therefore advisable to look at alternative accommodation to rent or buy for the other parent. Once you have established the additional budget required you have a base from which to begin looking at both parties' ongoing needs as well as your child (ren's) needs. The division of assets/finances will be significantly influenced by these factors.

Look after yourself! Going through divorce or separation can be very stressful. If you find it particularly difficult, seek help from friends and family, your GP, divorce coaches or counsellors.

2. Does a solicitor have to negotiate assets/finances for you?

No. If you are able to agree with your ex-partner an asset and financial split that you are both happy with then you don't have to bring a solicitor in until you are ready to draft a 'consent order' which is the only way to achieve a final, binding agreement between divorcing spouses.

A solicitor can draft a consent order which will go to court for approval to make it legally binding. The consent order explains how you will divide assets such as: property, savings, investments etc, and it can also include arrangement for maintenance payments and child maintenance. Properly drafted, this document should provide complete certainty for both parties.

You can ask the court to approve a consent order once you have obtained a Decree Nisi in the divorce proceedings.

3. What happens if you can't agree?

Either you or your ex-partner can apply to the court to resolve financial disputes. However, before doing so, you will be required to try mediation to assist you both in reaching an agreement. If mediation does not work or one side does not want to try mediation, then you may have little option but to start court proceedings to resolve the financial issues.

The court's approach is to calculate and then distribute the parties' assets and finances with the welfare of any child (ren) of the family under the age of 18 being the primary consideration.

Considerations on finances/assets will include:

- Details of the financial needs of both parties, including:
 - your standard of living;
 - your ages and the length of your marriage; and
 - any disabilities.
- The court also considers the following additional factors:
 - the respective contributions of each party;
 - the conduct of each party (although only in very exceptional cases); and
 - any benefit either party will lose as a result of the divorce (such as a spouse's pension).

4. Asset distribution

Assets accrued during a marriage are usually divided equally. Where possible a court will try to ensure that a party who inherited or introduced a particular asset retains it to meet their own needs.

The family home, which is always central to any divorce, will be

one of the main assets that needs to be divided even it was owned by one party before the marriage. If you have children, it is common for one parent to want to remain in the property to maintain as much continuity as possible. When this is the case, the other party may receive other assets to even up the 'distribution of assets' or it may be possible to agree to defer receiving a payment until the property is sold or when the children move out.

5. Clean break

To help you both to become financially independent of each other a court looks to achieve a clean break if possible. If there are insufficient assets to achieve a clean break and one party is required to pay ongoing maintenance to the other, this will generally continue until one of the following occurs:

- The receiving party remarries.
- The receiving party dies.
- Further order of the court.

A court can award maintenance for a fixed period of time to help one party to become more self-sufficient e.g. obtain employment. A court will consider the following in a maintenance award case:

- The needs specified by the payee in a budget, and any earning capacity they have.
- The standard of living during the marriage.
- The payer's ability to pay.

6. Where the parties' resources exceed their needs

In the vast majority of cases, the financial resources of both parties will not be sufficient to meet everyone's needs comfortably. In the rare cases where you and your former partner's financial resources exceed your reasonable needs

the court will generally look to create an equal division of matrimonial assets. This does not apply to property that has been inherited or introduced by one party during the marriage. Exceptions do apply, for example if properties have been put into joint names or if an item has been inherited and sold to buy a holiday home.

Where assets are entirely, or largely, non-matrimonial, the division of resources may be determined entirely by each party's needs. Financial provision may also include compensation for economic disadvantage (this is where one party may have given up a successful or well-paid career to look after children).

7. Child maintenance

a) If you agree

As a parent you are both legally responsible for the financial costs for bringing up your child (ren).

If you can agree child maintenance between you and your former partner this avoids a potentially stressful and difficult issue. You can do this together or through your solicitor. Whilst the courts usually do not make child maintenance orders, if you both agree what is to be paid, this can be part of the financial Consent Order mentioned earlier.

It is worth noting that after a 12 month period after the date of any consent order, either party has the option to apply for a fresh assessment of what amount of child maintenance should be paid, by applying to the Child Maintenance Service .

b) If you cannot agree

The Child Maintenance Service (CMS) has the jurisdiction to assess and enforce child maintenance which usually take the form of regular financial payments towards your child (ren)'s everyday living costs.

More details of this are available at : <https://www.gov.uk/calculate-child-maintenance>

8. Updating or making a Will

It is worth considering making a Will or reviewing the existing one to reflect your wishes following divorce. If you do not have a Will and something happens to you whilst you are still married, your spouse is likely to inherit everything.

In all cases, taking early advice is important to help you make the right decisions about your and your child(ren)'s future and to gain financial certainty.

Please contact any of our family teams to arrange a free no obligation consultation.

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