

Dealing with The Family Assets upon the Breakdown of a Marriage

Upon the unfortunate breakdown of a marriage and the divorce proceedings being issued by either the husband or wife, consideration will undoubtedly need to be given to the family assets and how to divide these fairly.

This can be a rather complex process which is often muddled by differing views of the husband and wife as to who should get what. At Hatten Wyatt we have a team of specialist family solicitors on hand to advise you as to the most appropriate and fair division of the assets. We also have the knowledge and ability to put these agreements (or Order of the court) into effect which therefore assists in easing the stress for the client.

What are the family assets?

When establishing a fair and appropriate division of the family assets ALL assets and liabilities of the parties are taken into consideration. This includes any properties, (whether jointly or solely owned), cash, monies in bank accounts, investments such as shares, pensions and valuable items (e.g. car, boat, valuable future etc). These are all 'put in to one pot' together with all liabilities of both parties including any outstanding mortgages, credit cards debts, personal loans, overdrafts, etc and from this the value of the assets can be established.

What factors are taken in to consideration when establishing a fair division?

It is important that ALL THE CIRCUMSTANCES OF THE CASE are taken into consideration whether past, present or future. This can include the existence of any agreements made by the parties, the possibility of re-marriage and the possibility of parties achieving self sufficiency etc.

The 'first consideration' must be the welfare of any children of the family. Thereafter a number of factors must be considered including:

- The financial resources of the parties which includes income, earning capacity, property and any other financial resources which either party may have now or is likely to benefit from in the future.
- The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have.
- The standard of living enjoyed by the family before the breakdown of the marriage.
- The age of each party to the marriage and the duration of the marriage.
- Any physical or mental disability of either of the parties to the marriage.



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- Any contribution that either of the parties made or is likely to make to the welfare of the family. It is important to note that this does include any contribution by looking after the home or caring for the family; it is not just financial contributions.
- The conduct of each of the parties.
- The value to each of the parties of any benefit that the party would lose as a consequence of the divorce.

What are the possible outcomes that can be achieved?

At Hatten Wyatt we will, where possible, attempt to reach fair and appropriate agreement on your behalf by entering into discussions and negotiations with the other party (or their legal representatives). We can also refer you to a mediation provider for you and your partner to attend an appointment with a mediator who is an independent third party who will

attempt to help you both reach an amicable agreement.

In the event an agreement cannot be reached we can advise and assist you in making any applications at court in order for the issues to be resolved and appropriate orders made. We also work closely with specialist barristers who can provide professional opinions and can represent you at court.

When an application is made at court there are various Orders that can be made which include:

- Periodical Payment Orders which generally constitute an obligation on a party to make regular payments to the other party; otherwise known as maintenance.
- Lump Sum Orders which provide for one party to make a payment of one lump sum of money to the other party.
- Property Adjustment Orders which can include a transfer of property order, a settlement of property order and a variation of a settlement.

There are various types of transfer of property orders, settlement orders and variations of settlements which are available and one of our family solicitors will be happy to discuss these with you in more detail.

- Orders For Sale of a property or an asset to provide a lump sum for one of the parties.
- Pensions Sharing Orders which allow one party to still receive any benefit from the other party's pension policy which they would have benefited from had divorce proceedings not been issued.

The courts also have the power to make orders to prevent one party from selling or transferring assets of the family or (in the event assets have already been transferred/sold) set aside any transaction that has already completed. These powers are particularly important when one party of a marriage is attempting to hide assets so as to prevent the other party from realising an interest in those particular assets.



What about the division of assets between unmarried couples?

The legal position of unmarried couples is substantially different from that of married couples and the possible outcomes available are also significantly different. Should you require legal advice and/or assistance regarding the division of assets upon the breakdown of a relationship then contact our Family Department today to arrange an appointment with one of our experienced family solicitors who will be happy to discuss the various options with you.

Summary

In essence, each case is different and any decision or order made will be dependant upon the individual circumstance of a client's case. If you require advice and or representation regarding family finances, (whether arising from a marriage, civil partnership or a relationship in which you and a partner were cohabiting), contact our offices today to make an appointment with one of our specialist family solicitors who will be happy to assess your eligibility for legal aid and advise you accordingly.

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