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Finances: The basics

DECEMBER 2020

Financial applications on divorce are referred to as ancillary relief or financial provision. The English equivalent are known as financial remedy proceedings. All applications for financial provision are dealt with in the Royal Court as part of the divorce proceedings. The financial proceedings are said to be ancillary to the divorce, but they are quite separate in that they require their own application.

It is possible to obtain a Final Order of divorce before you have resolved the financial issues. If there are no financial matters to be resolved, it may be that no application for ancillary relief is ever issued.

An application for ancillary relief can only be issued and served on the other party once a divorce petition has been filed at Court. Once this has been done, then either party can apply for one or more of the following financial orders:

- Lump sum
- Vesting of property
- Interim maintenance
- Spousal maintenance
- Child maintenance

For more information on the orders that the Court can make, see Orders Available.

Most of the relevant documents and procedure relating to financial provision are set out in 'Practice Direction No 7 of 2004'.

The application for ancillary relief is called Form B.

By far the most important document in the financial proceedings is the financial statement, which is referred to as Form A. This is a 26 page questionnaire which provides the Court and the other side with all relevant information regarding each party's finances. Each party has to complete Firm A and attach to it copies of all relevant documentation, which should as a minimum include the following:

- Valuations of property where available
- Up to date mortgage statements
- Twelve months' bank statements
- Valuation of pensions (cash equivalent transfer value)
- Statements to confirm value of all life policies and other investments

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- Proof of debts
- Statement of outgoings
- Wage slips for the last three months and December of the preceding year

Other documentation and information can be provided and may be needed depending on the particular facts of the case. Usually, the more information and documentation provided at the outset, the less is required later.

The purpose of Form A is to provide the other party and the Court with all relevant information and documentation to enable the parties to negotiate a financial settlement in the full knowledge of all available assets.

Firm A's can be exchanged with the other party either on a voluntary basis or by direction of the Court. This is usually done on a reciprocal basis.

Once Form A's have been exchanged, it is open to either party to raise additional queries regarding the other side's disclosure. This is often done by advocate's letter or in the absence of a satisfactory response, by application to the Court. Ultimately, it is a matter for the Court as to what documentation is deemed to be relevant.

PROCEDURE

For a pictorial version of what happens in a typical application for ancillary relief, see Flow Chart of Financial Application.

The standard procedure varies on a case by case basis but generally the applications follow a similar pattern.

Most cases begin by one party's advocate writing to the other suggesting an exchange of financial statements (Form A). In most cases, Form A's are exchanged on a voluntary basis. If this cannot be done, then the only option is to issue an application for financial relief. This is done using Form B. This is a one page application which sets out in very broad terms the orders sought by the applicant.

It is important to remember that an application for ancillary relief can only be issued once a petition for divorce has been issued. If no petition has been filed, then no application can be brought for ancillary relief. This is one of the several cross overs between divorce proceedings and applications for financial provision. If one party refuses to co-operate by exchanging Form A's on a voluntary basis, then the other party may be driven to issue a petition (assuming they have grounds for divorce) and only then can they issue an application for financial provision using Form B.

If financial statements (Form A) are exchanged, this may be followed by a further request seeking disclosure of any other relevant documentation.

Once these issues have been resolved, there may be a period of negotiation to try and resolve matters by agreement. If an agreement can be reached at this stage, then a financial settlement can be recorded in a

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Judicial Separation by consent. See How to reach a Financial Settlement.

If a financial settlement is not forthcoming, then it is open to either party to list the matter for directions before the Royal Court. This application is dealt with at the Matrimonial Interlocutory Court. The standard directions include a date for Form A's to be exchanged, joint valuations to be carried out on any properties or other assets and for additional documentation to be provided.

If there is a dispute about what documentation is required, then the Court may fix a hearing called a First Appointment. At this hearing the Court will hear representations from each party's advocate and will order disclosure of any additional documentation.

Consideration should also be given to valuing the assets. Unless the parties can agree a value, valuations will be required of all assets including the matrimonial home and other properties, investments, pensions, shareholdings, valuable chattels and possibly businesses.

Valuations of the matrimonial home and other properties are usually straightforward. In accordance with 'Practice Direction No 7 of 2004', best practice requires that the parties agree to appoint a joint valuer. Neither party is bound by the joint valuation, but a good reason would be required to justify a further valuation.

Valuations will also be required of all investments such as life policies and pensions. Life policies are valued by reference to their current surrender value, not the value on maturity or death.

Pensions are valued by their cash equivalent transfer value (CETV). This is a rather artificial value calculated on the value of the pension fund were it to be transferred to another pension company. It should be remembered that despite its name, the CETV does not equate to available cash and must not be regarded as such when comparing the value of a pension fund to other liquid assets.

Currently under Guernsey divorce law, pensions cannot be split other than with the consent of the parties, the pension company and the States of Guernsey Tax Office. Some pension companies will co-operate with a Guernsey court order made by consent to split a pension fund. If pensions are not to be divided in this way, the value of each pension fund can still be taken into account in any financial settlement. In the event that there is a significant disparity in the value of each party’s pension fund, the Courts will allow each party to retain their pensions and then seek to compensate the party with the lesser or no pension provision by allowing them to retain other assets in lieu. This is called 'set off'.

Generally, the contents of the matrimonial home are not valued and are instead divided between the parties as part of any settlement. The exception to this relates to valuable antiques, paintings or other valuable commodities such as vintage cars or car registration numbers, which may have to be valued professionally.

The value of a trust interest is a complex issue which requires thorough investigation.

Similarly the value of business interests, including sole traders, partnerships and companies can be a very difficult area which requires expert legal advice at an early stage. Where appropriate, forensic accountants may

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need to be instructed to value a business or company but this will only be done if it is likely to be cost effective.

Once the necessary valuations have been obtained, the case is ready for the Financial Dispute Resolution hearing (FDR). The FDR is an attempt by the Court to encourage the parties to reach a settlement. For further information, see Financial Dispute Resolution Hearings.

In brief, the FDR hearing will take the form of an informal without prejudice hearing before a Judge. Each party will file at Court copies of all the relevant documentation, including the Form A's and other documents together with a chronology, schedule of assets and position statement setting out each party's case. Each party will also file copies of all letters setting out proposals for settlement. The Court will read all of the documentation prior to the hearing. The parties attend the FDR hearing before a Judge in a courtroom. No formal evidence is heard. The hearing itself lasts about an hour. At the conclusion, the Judge will give his best guidance as to the likely outcome of the case. In practice, such hearings are invaluable in that they give people a clear indication as to the likely outcome in the event that the matter were to proceed to trial.

The reality is that most cases settle at or shortly after the FDR hearing. Whilst there are no statistics available, probably less than 5% of cases proceed to a contested trial on finances.

In the event that the case does proceed to a final hearing, the Court will hear evidence from the parties and their respective witnesses. Witnesses may give evidence as to disputed facts. Professional witnesses can give opinion evidence provided this falls within their professional expertise. This could include evidence as to the valuation of a particular asset such as a property or possibly a forensic accountant giving evidence as to the value of a business.

At the conclusion of the hearing, the Judge will hear representations from each party's advocate as to the orders sought and the reasons why they seek such an order.

Having heard all of the evidence, the Judge will produce a written judgment setting out who will receive which assets and why. The Court may also hear representations as to costs, although in practice costs orders are relatively rare. At the conclusion of the case, the order of the Court will be implemented and assets sold or divided on the terms set out in the judgment.

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