

FINANCIAL DIVISION OF ASSETS

FOLLOWING BREAKDOWN OF MARRIAGE

The court has total discretion in allocating financial assets of either party to the marriage. In any financial order it makes, the court will consider above all the welfare of any child of the marriage.

Thereafter the court must also consider:

- the financial resources of the parties
- their financial needs for the future
- their contributions during the marriage
- any lost financial opportunity as a result of divorce
- the length of the marriage
- relevant conduct: only considered if extreme violence or financial misconduct

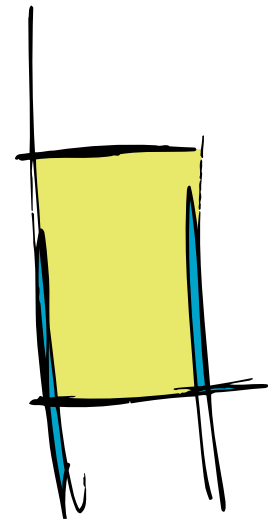
We will guide you through settlement negotiations, trying to achieve a fair and speedy result. We will only issue full court proceedings where this will help achieve those goals.

What role is there today for pre-nuptial agreements? Preventative measures to avoid litigation, such as “pre-nuptial agreements” are currently of relatively low value since the courts will not usually be bound by them. However, their importance is growing. For example they are already used as a tactical device to encourage a spouse to accept a pre-agreed settlement upon breakdown of a marriage.

Also, **the Courts are now starting to take the agreements into account** in divorce and financial proceedings. Cases are now being reported where the Courts will be guided partly or even entirely by the settlement level recorded in the prenuptial agreement, particularly after a short marriage. You would need to have legal advice upon breakdown of a marriage where there is a pre-nuptial agreement to assess the chances of the agreement being upheld in your case.

If both parties agree to be bound by the agreement, it is advisable to submit the agreement to the court for approval in order to become a binding Court Order. Provided (i) the agreement is not extremely unfair to one party, (ii) both parties had received legal advice at the time it was made and (iii) the parties’ circumstances have not changed significantly since the agreement was made, the court would probably approve it and make a binding Order which repeats the terms of the agreement. This can avoid the need for a protracted court dispute.

What if one party does not want to be bound by the agreement, but instead wants to go to the family courts? In that case he or she can still often get out of the agreement, for instance, if the parties’ circumstances have changed significantly since the agreement was made. This will usually be the case after a marriage of any significant length. At present the family courts will support such a spouse. The courts wish to retain their absolute discretion to divide the family assets up according to the needs of the case upon divorce and not according to an agreement which may have been made several years earlier under different circumstances.



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