



## Divorce and Ancillary Relief/Financial Matters

The Court, before making its decision to grant a divorce, has a duty to ensure both parties to the divorce proceedings and their children have a fair and equitable arrangement on their financial affairs.

The Court encourages the parties involved in divorce proceedings to participate in mediation and a range of alternative dispute resolution processes to reach a mutual and voluntary agreement on custody and financial arrangements which will subsequently be made into a court order.

### **The Court may make orders on any one or more of the following:-**

#### **1. Monthly maintenance**

- An order for maintenance can either be a request by the petitioner or the respondent for support by his/her spouse or for support of their children alone or jointly. In most cases, the amount of maintenance is determined on the monthly salary or on earning capacity of both parties.
- An order for the benefit of a spouse usually remains in force during the joint lives of the parties to the marriage, or until the date of the remarriage of payee, or until a variation is made, whichever shall be the earlier.
- In general, an order for the benefit of a child will remain in force until the child in question reaches the age of 18 or completes his or her full time education, whichever shall be the later.
- If the party ordered to pay maintenance fails to pay, the Court has the power to make a variety of orders such as: an Attachment of Income Order and/or charging order against his/her property, impose interest or a surcharge, or to commit him/her to jail.
- The Court may, on application, vary the order when it is satisfied that the financial position of the applicant has changed substantially and that the variation is justified.

#### **2. A lump sum order**

In addition to a periodical payments order, the Court may make an order for:

- A lump sum to be paid by one spouse to the other spouse as a fair distribution of the family's assets.
- In lieu of periodical payments, the Court may also order a lump sum payment from one spouse to the other spouse on a "clean break basis" and in full and final settlement of such spouse's financial claims including periodical payments order.
- Even when both parties to the divorce reach a lump sum payment agreement, it will not affect his/her rights to claim maintenance on behalf of his/her children.

#### **3. Transfer of property**

The Court may order one party to the divorce to transfer to the other party the matrimonial home, or property belonging to one party, or jointly owned by both parties, to the other party.

#### **4. Sale of property**

Upon making or after the making of the above ancillary relief orders, the Court also has power to order for the sale of a property as may be specified in the order, being a property in which or in the proceeds of sale of which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion.

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### Court proceedings

In every case, the Court is required to consider all circumstances including but not limited to the contribution made by both parties to the marriage, the income and assets of both parties, earning capacity, age, the length of the marriage and the fitness and health of the parties. The Court has a discretion to reduce as much as possible any adverse impact that may affect the children on the divorce, charging order against his / her property, impose interest or a surcharge, or to commit him / her to jail.

- The Court has very wide powers to order both parties to fully disclose their financial position. The parties must make full disclosure of all assets and complete a comprehensive questionnaire, the Form E on their

property and income. The information provided by the parties will enable the Judge to have a complete picture of the family's financial position, and as part of the Financial Dispute Resolution ("FDR") Scheme, both parties will attend a hearing before a Family Court Judge to advise whether a settlement of the finances can be reached. If settlement cannot be achieved in a FDR hearing, then both parties will need to proceed to trial for determination of the ancillary relief/financial matters.

- Any person attempting to conceal any assets owned by him/her or makes a false declaration of his/her means may be subject to criminal sanctions.
- A Form J will have to be completed for applications involving children under the Children's Dispute Resolution ("CDR") Scheme.

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