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Your questions answered

HOW TO PROTECT YOUR MONEY DURING A DIVORCE

The purpose of this Stowe guide is to explain how you can protect your money during a divorce.

It is very important to divide and share assets in a divorce be it savings, pensions, houses, debts and inheritances, fairly. Any attempts to transfer, hide or dispose of money and assets are likely to be penalised by the Court.

Can I transfer money before divorce?

If this is the transfer of your own money, the answer is 'yes... but'.

It is important to consider what money you are transferring before a divorce and whether this might be perceived later as trying to 'hide' assets or exclude them from the financial considerations in your divorce. It is vital to discuss this with your solicitor before you transfer money.

If you are transferring money between you and your spouse, by agreement, in anticipation of your divorce, then it is also essential that you discuss this with your solicitor before you do so.

It is important to ensure that any money transfers are made as part of an overall agreed plan and that this is recorded suitably. One of the key risks here is that the money is spent and that your spouse may look for another payment in the future.

Can I spend all my money before a divorce?

It would be very unwise to spend all of your money before a divorce.

While of course there is very little to stop you, the sensible answer is 'no'. Such a move would be seen as transparent by the court as an attempt to deprive your spouse of a fair share.

The likely outcome is that the court would consider penalising you if you spent most or all of your money before a divorce. If your spouse suspects that you might do this, your spouse can apply to the court for a freezing injunction, preventing you from dealing with any of your assets, to protect them for the divorce.

How can I protect my pension in a divorce?

The best solution is to take robust legal advice on this subject and to consider engaging the services of a Pensions Actuary or a **Pensions on Divorce Expert (PODE)** to consider the value of your pension(s) against those of your spouse.

It is also worth considering the proportion of your pension that might have accrued before your marriage with a view to exploring whether it is possible to exclude a proportion in divorce financial negotiations.

How can I hide assets in a divorce?

It is possible. Many try but few succeed. **Divorce and financial remedy cases require full and frank financial disclosure.** When this is not provided it is obvious. In these days of computerisation of almost every aspect of our lives, there's a trace of everything. While some people may succeed in deceiving their spouses or give them little to no evidence of a possible hidden asset, experienced family lawyers will know where to look.

In addition, **the courts have the power to take into account people's actions and responses in providing full and frank financial disclosure.** If an answer to a question about disclosure isn't adequate the court can draw adverse inferences. This can lead to penalties in financial distribution.

The court can also order the asset-hider to pay some or all of their spouse's legal fees.

How can I hide money in a divorce?

With huge difficulty. If you really want to, the best way is to have hidden the asset or the bank account for the entire duration of the marriage, with no intermingling of the money, no transfers back and forth and absolutely no documentation arriving at home.

While we are entitled to privacy in such documentation, even from our spouses, it is not always possible to avoid seeing something that leads to knowledge of an asset, or at least suspicion of it.

The more complex an asset portfolio or structure a person holds, the greater and deeper the level of investigation of it in a divorce. **The simpler someone's assets, the harder it is to hide or avoid a trail.**

Can I transfer my assets before a divorce?

Yes, it is possible but transferring assets (as opposed to money) is a sure sign of an attempt to exclude it from a divorce settlement or financial remedy outcome. Apart from that, the courts can divide other assets to eliminate the effect of the asset transfer.

As with **attempting to hide assets in a divorce, it is very difficult and incredibly risky.** The courts can draw adverse inferences which can lead to penalties in the financial distribution. The court can also order that the asset-transferer pay some or all of their spouse's legal fees.

Can I sell my assets before divorce is filed?

Again, **this is almost invariably going to be perceived by the courts as an attempt to hide an asset or exclude it from a divorce settlement or outcome.** It's considered suspiciously and will colour the court's view of all of your other dealings and responses to questions.

What are the consequences of hiding assets in a divorce?

If you're caught hiding assets or the court concludes that you have, it can distribute assets to compensate your spouse for the hidden or sold asset(s).

A clichéd example is a husband buying himself a brand new Porsche outright in the months leading up to a divorce.

The intention is to deprive his wife of a share of at least £100,000. By the time the court considers the value of the Porsche, it may have halved. But the judge would be perfectly entitled to distribute assets leaving the husband with the full hit of the Porsche purchase, depreciation and transferring assets to the wife as if the £100,000 had remained in the savings account.

Ultimately, hiding/selling/transferring assets, to deprive a spouse of a fair share in divorce, and to deceive the court, is a fraud which is a criminal offence punishable by imprisonment.

Can I use trusts to protect my money during a divorce?

Trusts are often used to 'protect' assets in a divorce.

While the family courts do not have investigatory powers like the police, they can and do ask probing questions. Inadequate answers and deficient disclosure will lead to adverse inferences being drawn and settlements eliminating the effect of the trust.

Genuine trusts are relatively transparent and appear fair and reasonable. When trusts are hard to explain and justify the courts are suspicious. Equally, trustees can be brought into cases to justify the trust.

Invariably, creating a trust under false pretence, to 'protect' money in a divorce will lead to the court drawing adverse inferences. Worthy trusts that are drawn up at the last minute prior to a divorce, even if honourable in purpose, also risk this court conclusion.

How long after divorce can my spouse claim assets?

It's important to consider assets and incomes separately. If spouses divorce without addressing their financial affairs in a court order, known as a consent order, then the answer is potentially indefinitely. But **if one spouse remarries, they will lose the right to seek maintenance from their ex-spouse.**

As for assets, claims many years after marriage and separation can and do happen. That is not to say that it would lead to a 50/50 split after 30 years of divorce, but in normal circumstances, say five years after a divorce, a claim can lead to a massive financial surprise.

Furthermore, even though divorce essentially resets inheritance positions, it does not prevent an ex-spouse making a claim against the estate of the deceased. This can, therefore, lead to enormous distress and expense for relatives. **The solution is to have a court order addressing financial claims that arise from divorce.**

It is very important and prudent to divide and share assets at the time of the divorce: savings, pensions, houses, debts and inheritances. Whether the agreement or settlement includes maintenance or not, a Consent Order approved by the court as part of a divorce will protect the agreement and prevent a 'second bite at the cherry' in years to come.

Need more information?

Call our Client Care Team on **0330 838 7456** to speak with one of our specialist family lawyers or visit www.stowefamilylaw.co.uk



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