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HOW TO: OBTAIN A FINANCIAL CONSENT ORDER

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This Stowe talks: How to guide explains the process for how you apply for and obtain a financial consent order.

As part of the divorce process, it is crucial to reach a financial settlement with your ex-partner that outlines how assets and debts will be split, any maintenance paid, and end your financial relationship.

It is also important to make this agreement legally binding by applying for and obtaining a financial consent order from the family court.

What is a financial consent order?

A financial consent order is a legal order made by the court. It makes the financial agreement you have reached with your ex-partner during a divorce legally binding.

What does a financial consent order cover?

Financial consent orders set out the overall financial agreement that you have reached with your ex-partner on the division of the marital assets.

The order can cover what will happen to certain assets, such as the matrimonial home or other property, savings and investments, pensions or any other capital assets, you may have.

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They can also cover what will happen with regards to maintenance and include other agreements reached, such as what will happen to the contents of the family home, cars, jewellery and other items.

In some cases, if appropriate, the order can simply say neither party has any current or future financial claim against the other's income and assets, and achieve what is often referred to as a 'clean break'.

Why do you need a financial consent order?

You need a financial consent order, because it is important to ensure that all financial claims you and your ex-spouse have as a result of being married are dealt with.

If finances are not dealt with alongside the divorce process, then financial claims between you and your ex-spouse can remain open. This means either party could potentially make a claim in the future if one person's financial position changes, for example, if one party receives an inheritance or wins the lottery.

Obtaining a financial consent order will set out how your finances are dealt with, and dismiss future claims.

What do you need to do to apply for a financial consent order?

Before you can apply for a financial consent order, you will need to have started divorce proceedings.

It is highly recommended that parties have engaged in full and frank financial disclosure, so they know each other's financial position, and what matrimonial assets and financial resources there are in full.

Then, you must have agreed with your ex-partner about how your finances will be dealt with. This can be achieved by direct discussions between parties, or if that does not work, there are other alternative dispute resolution methods, such as mediation, solicitor negotiation, arbitration and collaborative law, that can be used.

Failing that, an application to initiate financial proceedings in the family court can be made to seek the assistance of the court in deciding how your finances should be divided. However, it is advisable to try and reach an agreement outside of court, and most cases do not go to court.

When can you apply for a financial consent order?

You cannot apply for a financial consent order until you have received your conditional order from the court in your divorce proceedings.

How do you apply for a financial consent order?

You apply for a financial consent order by filing a number of documents at Court.

You will need to complete and file:

- An application referred to as a notice of an application for a financial order - a Form A
- The draft financial consent order;
- If applicable to the agreement you have reached, you made need a pension sharing annex
- A court form called a 'statement of information' often referred to as a D81.

A family lawyer can help you complete and draft all these documents for you.

There is also a court fee of £53 payable to the court on filing the documents.

Once your documents have been sent to the court, they will be referred to a judge for review and consideration, and hopefully approved. Following which, you will receive a sealed copy of your financial consent order.

Do you have to go to court?

When you submit a financial consent order, a judge will review it in private, so you will not need to go to court if it is approved.

If a judge has any questions about the consent order before approving, there is a possibility they may list a hearing to seek further clarification from you and your ex-partner. So you may then need to go to court. However, this is not common, and a family lawyer would advise you further should this happen.

Why are financial consent orders important?

Financial consent orders are important, because you want to ensure that all financial claims you have as a result of being married are dealt with and unless provided for in the consent order, there are no future claims that can be made against each other.

Also, if your agreement is not legally binding, a court cannot enforce it if there are any issues later on.

What happens next?

Once your financial consent order is granted, you will need to take steps to ensure the order is implemented.

For example, you may need to sell the matrimonial home and divide the proceeds of the sale as per the consent order.

The importance of legal advice

It is important to speak to a family lawyer, because they will guide you through the process and assist in drafting a financial consent order.

They can advise you on your position as to what a possible settlement options may look like. If you have engaged in full and frank financial disclosure, a family lawyer can advise you on whether the agreement is fair and reasonable and meets both parties' needs.

Useful links and information

Form A - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1188090/Form_A_0722.pdf

D81: Statement of information - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1138049/D81_0223_save.pdf

Government website: Apply for a consent order <https://www.gov.uk/money-property-when-relationship-ends/apply-for-consent-order>

For more Stowe talks: How to videos and further free resources, visit: stowefamilylaw.co.uk/support

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