



WHO GETS WHAT IN DIVORCE?

Asha Sumpth, Head of the Family & Relationships Department
at Glazer Delmar Solicitors explains:-

What is ancillary relief?

It is the term for the financial arrangements and the dividing up of assets, or the things the couple own together, which happens when they get divorced. Money matters are called ancillary because they are seen by the courts as less important than the actual divorce proceedings.

What does the court consider when deciding ancillary relief?

The court will look at all the circumstances of the couple, including their income, property, financial needs, obligations, age and standard of living. Need is really important – for example the children’s main carer may need to stay in the matrimonial home, and the other spouse may get to keep all his or her pension rights. This is called offsetting.

Since the case of **White v White** in 2000, courts have looked at the contribution of both spouses and consider that the child-rearing and domestic contribution has a value, rather than just the earning power of the working spouse (if only one person is working). The court may also look at a prenuptial agreement, but they are not binding under UK law.

What sort of arrangements can be made under ancillary relief?

A lump sum can be paid from assets or pensions, a financial order made applying to the sale or transfer of property, or maintenance payments for a husband or wife who is caring for children and not working can be arranged.

Either party can apply for an interim order if they need financial help while fighting the case. For example, the wife might need money because she has not been working outside the home. This can be applied for anytime until the final hearing.

What sort of court proceedings govern ancillary relief?

The legal procedure consists of first appointment, financial dispute resolution and final hearing. The aim is to get both spouses to agree, but the court can impose a solution as a last resort. Ancillary relief follows a timetable. You have to file for divorce first.

Both parties must make a “full and frank” disclosure of their finances, and declare any changes that take place as the divorce proceeds. This goes back a year before the divorce started. This is because the parties must have been separated for at least two years before they can divorce, so the court needs to have some background financial information.

Usually at least one partner has a pension, so the financial provision has to be sorted out before the marriage is dissolved and the decree absolute is pronounced. Since changes to the law in 2000, a pension sharing order can be granted which allows retirement benefits to be divided.

As far as the couple’s home is concerned, there are four main orders the court can grant. It can be transferred to one party’s sole ownership. In a deferred interest order, one party can stay in the home for an agreed time, such as until the children are independent. In a Mesher order, the wife stays there rent free, and the sale of the home is postponed until the children are 17.

Under a Martin order the wife or husband stays on in the marital home for the rest of their life or until a particular trigger event, such as remarriage or a voluntary decision to leave.

Does ancillary relief cause disputes?

Usually it is quite simple, as the husband and wife have agreed that the marriage is over. However, sometimes pensions can cause problems. A court cannot make any financial order final until the decree nisi is granted.

A dispute resolution appointment can be used to reach an agreement. A district or a high court judge examines everything in order to understand the differences between the two parties. This will be a different judge from the one at the final hearing, because they will have evidence that will not be available then.

Sometimes the parties reach an agreement at this point, the judge makes the appropriate consent order and the case finishes.

What happens to ancillary relief if there is a clean break?

If there are children who will need an ongoing financial commitment, a clean break may not be possible. However, it could happen after the husband or wife who has had time out to raise children is retrained and can support him or herself when the children are older.

Pensions can also complicate a clean break. An earmarking order allows money from a pension to be taken later in life when it is payable, not at the time of divorce, and most couples would rather have money up front.

For further advice, contact:-

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