



Free **Financial** **Guide** to Divorce

☎ 01249 704420
✉ tracey@moloneyfamilylaw.com
🌐 moloneyfamilylaw.com

🎵 @thelegalqueen
📷 @thelegalqueen
📘 @thelegalqueen

Welcome to your free financial guide to divorce

Divorce can be an emotionally challenging process, and the financial side can feel overwhelming. Understanding your financial rights, responsibilities and options is crucial in ensuring that you move forward with confidence. It's important to approach these decisions with clarity, so you can protect your future and ensure the best possible outcome for everyone involved.

This guide aims to show you all the stages of the financial aspects of a divorce in straightforward terms.

What happens to finances in a divorce?

When a couple divorce, they need to divide their finances. This includes everything from property and savings to pensions and debts. Each person's financial situation is unique, so the way your assets and liabilities are split will depend on several factors, such as how long you have been married, your individual contributions, your earning raising capacity, if there are any children in the marriage, any medical conditions that either of you have, and your needs moving forward. The interests of any children of the family are considered when any financial order is made as part of a divorce.

Dividing your finances during a divorce can seem daunting, but taking the time to understand your options and seek the right advice will help you make informed decisions. The outcome is to ensure that both parties leave the marriage with a fair share of the assets. The court want to ensure that all financial orders are fair and reasonable.

Remember, every divorce is different, and the outcome will depend on your personal circumstances. The most important thing is to be informed, prepared and open to negotiation as you work towards a fair financial settlement.

At Moloney Family Law, the team are available to assist you every step of the way. Tracey can be contacted via email to discuss the next steps – **tracey@moloneyfamilylaw.com**.

Guide to Financial Remedy Procedure

Procedure for dealing with the finances on separation and divorce

The expectation is now placed on parties to try and resolve disputes in relation to finances outside of the Court. The court now require that every application has attached to it a MIAM Form, known as a Mediation Information and Assessment Meeting. This does not mean that you have to attend mediation. The court recognises that mediation is not always suitable for all parties. However, the court are hoping that all parties will at least attempt mediation in a bid to resolve some of their issues. If the mediator concludes that mediation is not suitable, then they will provide you with a MIAM Form that will reflect the same.

Please note that there are a number of exceptions to attending a MIAM. These include:

- Domestic Violence,
- Child protection concerns,
- Related proceedings being issued in the previous four months,
- Urgency,
- Disability leading to an inability to facilitate a MIAM,
- Lack of contact details for the Respondent,
- Imprisonment/bail conditions preventing engagement,
- Non-residency in England and Wales of one of the prospective parties,
- Unavailability of MIAM facilities.

If an agreement can be reached at mediation or via negotiations, it is imperative that the agreement is embodied into a Consent Order. This is an Order which can be filed at Court as part of the divorce proceedings, without the need to attend Court in the majority of cases.

Once this is approved by the Court it becomes a legally binding document upon the pronouncement of your final order of divorce. Please note that without this there is a potential that either party could have a claim against each other at any time in the future, even if you are divorced.

If mediation is inappropriate or has failed and an agreement cannot be reached, it is then open to either of the parties to make an application to the Court.

Please see below the procedure for dealing with applications to the Court for Financial Orders. This is used in the event that negotiations in correspondence initially are unsuccessful. There are 6 steps to follow.

1. The Initial Application

The initial step is an application that must be made by filing a Form A. This is then sent to the Court along with the MIAM, and a copy is served on the other side. Upon receipt of this, the Court will confirm a first appointment. This will usually be listed 12-14 weeks from receiving the application.

2. The Financial Statement (Form E)

At least 5 weeks before the First Appointment, we have to send to the Court, and exchange with the other party, a Financial Statement (Form E). This Statement must contain the following information:

- Full name, age, date of birth and occupation,
- State of health,
- Date of marriage and date of separation,
- Full name and dates of birth of any children and with whom they live if appropriate,
- Details of your residence and the occupants,
- A concise statement of your means containing the value of all the assets liabilities, earning capacity, benefits under any pension schemes that you have or are likely to have together with any other resources which you may receive in the foreseeable future such as inheritance.

You need to also attach the following documents relevant to you:

- Last 3 payslips and P60,
- Valuations of all properties (valuation within the last 6 months),
- Most recent mortgage statement(s),
- Last 12 months bank statements for all accounts including joint accounts,
- Any insurance policy surrender valuations,
- Last 2 years accounts for any business and/or partnership and any documentation relating to a valuation of these and all pension valuation documentation.

It is essential that this statement annexes any further documents that are necessary to explain or clarify any of the above information. It is better to disclose too much information rather than too little.

After this statement has been sent to the court, both you and the other party will exchange Form Es, so that they have your Form E and you have their Form E.

3. Questionnaire and Request for Documents

Approximately 14 days before the hearing of the First Appointment referred to above, we must also send to the Court:

- A questionnaire setting out any further information that we seek from the other side,
- In respect of each property currently used as a family home (with the exception of rented property) the applicant shall file with the court a jointly obtained market appraisal of its value. If obtaining such evidence jointly has proved impossible, the parties should each file a market appraisal for each property and must be prepared to explain the reason to the court,
- Each party should use their best endeavours to file with the court and serve on the other party no more than 3 sets of property particulars showing what their case is likely to be on housing needs for themselves and the other party,
- File with the court your mortgage raising capacity,
- The day before the first appointment, the applicant must file with the court a composite case summary using the case summary template ES1 and ES2.

4. First Court Hearing – The First Appointment

The First Appointment is held with both parties and your respective solicitors or barristers if you have them. The Court will use this appointment to determine how the case should progress. Their objective is to define the issues and to save costs. In particular the appointment will be used to determine the extent to which each questionnaire shall be answered, and further documents produced. In addition, they will give directions as to valuation of evidence or other experts, as to chronologies or schedules etc. and also you will be required to provide an estimate of any costs that you have incurred to date. Please note that these are limited to legal costs. The next hearing will also be listed at this appointment. Usually this is known as a Financial Dispute Resolution or FDR Appointment.

On occasions, the Court will find that an FDR Appointment is not appropriate. In these circumstances, they will either fix a further directions appointment, fix the case for a final hearing.

5. Second Court Hearing – The FDR Appointment

This appointment is to encourage a discussion around settlement and compromise is expected of both parties. Both parties should be as open as possible with the other. Due to the nature of this hearing and that disclosures are frequently made, the Judge hearing this appointment will have no further involvement with your application. This would prevent you being prejudiced at a final hearing.

The Court will also provide an indication for settlement. Whilst the Court is unable to make a final order without both parties' agreement at the FDR, the judge will indicate how he would be minded to settle the matter in the event that the parties were in agreement to reaching a settlement.

In order to enable the Judge hearing the FDR to have full knowledge, they must receive your application a week before the appointment along with copies of any offers and proposals that have been made previously. These will be returned immediately following the appointment, so that they will not be kept on the Court file and will not prejudice the final hearing. The importance of this appointment is that the court wishes all parties to use their best endeavours to reach agreement on matters in issue. It is for this reason that the Court usually requires all parties to attend the appointment in person.

6. Third Court Hearing – The Final Hearing

This hearing will only take place if no agreement has been reached by the parties. If the FDR is not successful and the case cannot be agreed, then the final hearing will be listed. In a final hearing you are required to serve on the other side a concise statement, setting out the nature and amount of the Order which you propose to invite the Court to make. It may be necessary for you to give evidence and be cross examined at this hearing. If an agreement cannot be reached, the Judge will make a final order with regards to the financial arrangements.

In considering a fair and reasonable division of matrimonial assets, referral is made to the following list of criteria:

- The income, earning capacity, property and other financial resources which each spouse has or is likely to have in the foreseeable future. This will include, in the case of earning capacity, any increase in that capacity which it would be, in the opinion of the Court, reasonable to expect a person to take steps to acquire,
- The financial needs, obligations and responsibilities which each spouse has or is likely to have in the foreseeable future,
- The standard of living, enjoyed by the family prior to the breakdown of the marriage,
- The ages of each spouse and the length of the marriage,
- Any physical or mental disability of each spouse,

- The contributions which each spouse has made or is likely to make in the foreseeable future to the welfare of the family, including any contribution by looking after the home or caring for children,
- The conduct of each spouse, if that conduct is such that it would, in the opinion of the Court be inequitable to disregard it,
- The value to each spouse of any benefit, which one spouse, because of the divorce will lose the chance of acquiring (most usually pension provisions).

Jointly owned property

Please note with regards to property, if you are the owner of a property with someone else, you will either own that property as 'joint tenants' or 'tenants in common.' In order to find out which relates to your circumstances, you can obtain official copies of the Register from the Land Registry. If you would prefer, Moloney Family Law can do this electronically on your behalf.

The type of ownership will affect what you can do with the property in the event that your relationship with the joint owner breaks down, or if one owner sadly passes away.

Joint tenants, sometimes referred to as 'beneficial joint tenants', mean that you have equal rights to the entire property. In the event of your death, your share of the property will automatically pass to the other owner as opposed to the beneficiaries of your estate.

As tenants in common, you can own different shares of the property which are held as a percentage. In this instance, if you die, then your percentage shares will pass to the beneficiaries named in your will.

You are able to change whether you hold the property as joint tenants or tenants in common. You will need both parties' agreement if you wish to change to joint tenants.

If you wish to sever the joint tenancy and hold the property as tenants in common, then you will need to put this in writing to the other side.

If you have any questions or would like any additional information regarding financial arrangements on divorce, please contact Tracey via email – **tracey@moloneyfamilylaw.com**.

Thank you for reading

I hope that this guide was helpful.

However if you need further help or need an appointment to discuss getting a financial order so that you can sever all financial ties between you and your ex then please feel free to email me on **tracey@moloneyfamilylaw.com** with 'Free Financial Guide' in the subject line.

All the best

Tracey aka The Legal Queen





Free **Financial** **Guide** to Divorce

Information sourced by Moloney Family Law.
Copyright © 2024 Tracey Moloney Family Law Ltd.