

Success Starts Here Free Information Guide

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Tel: 0800 014 7445
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Family Law



Many people experience similar concerns and anxieties about financial issues when getting divorced. This free information guide offers some practical and legal guidance on commonly raised questions.

Who will live in the home when we separate?

The former matrimonial home is usually the biggest financial asset in a marriage.

Even if the home is only owned or rented by one spouse, the other spouse has matrimonial rights giving them a right of occupation and a potential interest in the home. The court can potentially transfer legal ownership, and some types of tenancies, to the other spouse.

In the long term a decision will need to be reached about what will happen to the home and that will very much depend upon the needs of the spouses and any dependent children, the spouses respective financial positions and if remaining in the home is financially viable. As expected the outcome will often depend upon the facts of each case.

In the short term a decision needs to be reached about who will live in the house pending a final decision. Whilst it may be difficult on a day to day basis, spouses with limited assets may find themselves having to continue to live in the former matrimonial home together until a decision is reached. However, in some circumstances, particularly where there is or has been domestic violence, this will not be appropriate.

In the absence of an agreement about who will move out of the home, either spouse could make an application to the court for an occupation order. This is an order of the court whereby a judge can order one spouse to move out of the home. In situations where there is domestic violence an urgent application can be made to the court.

If one spouse has to leave the home they will usually still have a potential financial interest in the home and long term decision will need to be reached about the ownership of the property.

Can I change the locks?

As set out above, both spouses have a right of occupation of the former matrimonial home. If you change the locks on the home you should provide your spouse with a copy of the new keys. However in situations where there is or has been domestic violence the victim may need to take protective measures to secure their safety. It is advisable to obtain urgent legal advice if you fear for your safety.

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What happens if I am not a legal owner/tenant of the former matrimonial home?

As set out above even if the home is owned or rented by one spouse, the other spouse has matrimonial rights giving them a right of occupation and a potential financial interest in the home. An owned property, and some types of tenancies, will form part of the 'pot of assets' to be dealt with alongside a divorce.

If your spouse is the owner of the former matrimonial then you can register a Home Rights Notice at Land Registry. Registering a notice will mean that if your spouse tries to sell the property or remortgage the home a buyer or lender's solicitor will be put on notice that you have existing home rights.

If the home is rented by one spouse, the court has the power to transfer some types of tenancies to the other spouse. It is very important that the tenancy is not surrendered before financial matters have been agreed or determined by a judge.

Who will pay the mortgage/rent on the home?

If you and your spouse are both parties to the mortgage or tenants of the property then you are joint and severally liable for the monthly repayments. This means that you are both legally responsible for making the payments. If the mortgage/tenancy is in the name of just one person then strictly speaking the other spouse is not legally responsible for paying but they are likely to be affected if payment is not made.

If arrears start to accrue there is a risk that the lender/landlord will apply to the court for a possession order. If a possession order is made, as well as losing your home, those named on the mortgage/tenancy are likely to have their credit rating adversely affected.

It is important to try to reach an agreement as soon as possible about who will be responsible for paying the mortgage/rent after separation.

If you, and/or your spouse, are in difficulties with paying the mortgage instalments, then you should contact the mortgage lender immediately to explain the situation and to put forward some proposals for dealing with the problem. The lender may be willing to reduce the monthly payments, give you a payment holiday or change repayments to interest only.

If you are in receipt of certain income related benefits you may be able to obtain Support with Mortgage Interest (often called Help with Housing costs) whereby the government will pay a contribution towards your interest only mortgage repayments. For further information you should contact the Jobcentre or, if you receive pension credit, contact the Pension Service.

If your spouse has stopped paying or contributing towards the mortgage or rent then it may be appropriate to make an application to the court for maintenance which can include an element for mortgage/rental payments.

If your home is rented and you are on benefits or your income and capital are below a certain level then you may be eligible for Housing Benefit. You should contact your local council for more information.

In situations when someone has had to apply to the court for an occupation order (see above) the court can also impose on either spouse an obligation to pay the mortgage or rent payments or other outgoings on the home.

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Who will pay the household bills?

If one spouse moves out of the home then thought needs to be given about how the household bills should be paid.

Electricity: An electrical supplier is under a duty to supply electricity to premises if asked to do so by the owner or occupier. The definition of customer is very widely defined and includes an occupier. Even if you are not named on the electricity bill, you are liable to pay if you have consumed electricity. When one spouse moves out of the home it is a good idea to notify the electricity supplier and have the bill put into the occupier's name. The spouse that has moved out of the premises should make a contribution towards the cost of the electricity used whilst they were living in the premises.

Gas: A gas supplier may recover from a consumer any charge due in respect of a supply of gas. A consumer is defined as all persons receiving and benefitting from the supply or only those who requested the supply. Therefore even if you are not named on the gas bill you could be liable. Again it is a good idea to transfer the bill into the name of the person who is occupying the home after separation and to divide the cost for the period when you both lived in the premises.

Telephone: Conventional contract rules apply to the relationship between a supplier and consumer. Therefore if the telephone contract is in joint names you and your spouse you are joint and severally liable for the charges. If the contract is in the name of one person strictly speaking only that person is liable to pay.

Council tax: Spouses that live together will be jointly and severally liable to apply council tax. When one spouse moves out the local authority should be notified. If the remaining spouse is the only adult in the house then they should be eligible for a reduction.

If the spouse that remains in the home is unable to pay the household bills, and the other party will not voluntarily contribute or pay, then it may be appropriate to apply to the court for a maintenance order.

If you are on a low income or welfare benefits you may be able to obtain Council Tax Benefit. If you are in receipt of Income Support, Jobseeker's Allowance, Incapacity Benefit or Employment and Support Allowance then you should contact the Jobcentre.

If you are on a low wage then you should contact your local council.

If you are in receipt of Pension Credit then contact the Pension Service.

Can I force a sale of the home?

If the property is jointly owned both spouses would need to consent to the sale of the home. If one spouse wants to sell and the other spouse does not then an application can be made to the court for financial relief orders alongside a divorce.

The court can make several types of orders in relation to the former matrimonial home:

- An order for immediate sale and division of the net proceeds of sale.
- An order for the transfer of the property into the sole name of one

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spouse. This may be accompanied by an order that the other spouse receive a lump sum of money or a charge over the home.

- An order for a postponed sale of the home with the proceeds to be divided between the spouses when the property is sold. This type of order is commonly made when the home needs to be retained in order to provide a home for children. A sale would usually occur when the children reach majority.

Which type of order is made will very much depend upon the individual circumstances of your case.

What will happen to the household contents?

Personal possessions, e.g. watches and rings, belong to the person who owns them.

General household contents from the former matrimonial home usually form part of the 'pot of assets' to be divided.

It can be useful to draw up a list of household contents and try to reach an agreement with your spouse about how the items will be divided.

If you or your spouse has made an application to the court for financial orders upon divorce then your agreement regarding the division of household contents can be recorded in the preamble of a court order. Unless the household contents are particularly valuable, e.g. rare antiques or collectables, then a judge is unlikely to be prepared to intervene.

Can I get welfare benefits?

Upon permanent separation from your spouse you may find that you become eligible for certain welfare benefits or your entitlement to existing benefits changes.

Council Tax Benefit and Housing Benefit

If you are on a means tested benefit or your income is low enough you may qualify for Council Tax Benefit and/or Housing Benefit.

Support with Mortgage Interest

If you are in receipt of certain means tested benefits you may be able to obtain Support with Mortgage Interest (often called Help with Housing costs) whereby the government will pay a contribution towards your interest only mortgage repayments.

Unemployment/stay at home parents

If you are not working you may be eligible for Income Support, Jobseeker's Allowance, Incapacity Benefit or Employment and Support Allowance.

Child Tax Credit

If you are on a low income and have at least one dependent child, you may be entitled to Child Tax Credit (CTC). The amount of CTC you receive would depend on your income, what benefits you are on and your circumstances e.g. the number of children you have and whether not you are disabled.

If you become divorced or permanently separated you must inform HM Revenue and Customs (HMRC) who will recalculate your CTC entitlement based on your new income figures. The HMRC use what they term as the 'normal living' and the 'main responsibility' tests, to decide which parent will be entitled to CTC after separation.

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Working Tax Credit

You might be entitled to Working Tax Credit (WTC) if you are on a low income and:

- Part of a couple with responsibility for a child where one of you works at least 16 hours a week
- A lone parent who works at least 16 hours a weeks
- A single person aged 25 or over and you work at least 30 hours a week
- Disabled or over 50 and work at least 16 hours a week

Entitlement is means tested so your income and savings will be taken into account.

If you are on Income Support or another means tested benefit, such as Income-based Job Seeker's Allowance you may still be entitled WTC, depending on your circumstances.

If living together, couples must make a joint claim. The amount of WTC you are entitled to depends on your particular combination of circumstances.

If you become divorced or permanently separated you must inform HMRC who will recalculate your WTC entitlement based on your new income figures.

Child benefit

Child benefit is paid to people who are responsible for a child or qualifying young person. Child benefit is a non-means tested although the government is proposing that, from January 2013, child benefit will be withdrawn from households with a higher rate taxpayer.

Child benefit can only be paid to one person who is responsible for a child/qualifying young person. For the purposes of child benefit being responsible for a child/ qualifying young person means that you have the child/ qualifying young person living with you or you contribute to the cost of providing for the child/ qualifying young person.

Potentially it is possible for more than one person to be eligible to claim child benefit. In the event of a competing claim for child benefit there are set priority rules which can be applied to help determine who the child benefit should be paid to.

I have more questions, where can I get the answers?

Separation and divorce can be a very stressful and anxious time and naturally you will have many questions to ask. Fisher Meredith has a team of dedicated Family Law solicitors who can guide you through the processes and endeavour to obtain the best possible outcome for you.

Useful links

www.direct.gov.uk

www.adviceguide.org.uk/index/your_money/benefits.htm

www.resolution.org.uk