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Tel: 0800 014 7445
Web: www.fishermeredith.co.uk
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Family Law



This free information guide provides an overview of how the Family Courts will deal with the matrimonial and non-matrimonial assets of a couple once their marriage is over.

Distribution of assets

When a marriage breaks down, the husband's and wife's assets are usually distributed equally between them. However, there are several factors that can change the division away from equality. Much depends on the length of the marriage and on who owned which particular assets at the time of the marriage.

Matrimonial property

If the assets were acquired through the joint efforts of a married couple, they are considered to be matrimonial property, for example:

- the family home
- a holiday home
- antique furniture bought during the marriage
- Savings and investments built up during the marriage
- A pension fund contributed to during the marriage
- Insurance policies

Matrimonial property tends to be shared equally and the more so the longer the marriage lasts.

Non-matrimonial property

If the assets were brought into the marriage by one spouse only, they are often referred to as non-matrimonial property, for example:

- An existing house or flat
- A family farm
- Shares in a family business
- Inheritance
- A gift received during the marriage.

Non-matrimonial property tends not to be shared equally, especially after a short marriage.

If, after the spouses separate, one of them goes on to acquire or create assets on their own those assets may also qualify as non matrimonial property. Bonuses often fall into this category and sharing them may fall off gradually over the period of separation or post divorce.

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The matrimonial home

The matrimonial home usually has a central place in the marriage and so in most cases will be treated as matrimonial property, even if it was originally brought into the marriage by one spouse alone.

The family home will not be left out entirely from the Court's powers to re-distribute the assets. However, in a long marriage any such property will become merged and entangled in the whole asset 'pot'. In a short marriage it is less likely to be shared, unless it has to be in order to meet the needs of the other spouse.

Revealing the assets

All assets have to be fully and frankly declared by the parties during "financial disclosure" at the beginning of the proceedings and updated as the proceedings continue.

Once the spouses have told each other all about their respective finances and the Court has considered the overall asset pot, the Judge can still decide to include the non matrimonial property in some cases.

The first thing to establish is the actual value of any pre-marriage assets. Your starting point will then be to deduct that value from the total pot and divide the rest equally (in all but short marriages). Only then, at the end of the process, can you look to see if the needs of both people are met. If not it is likely that some or all of the deducted assets will have to be brought back into the pot and shared out.

Assessing the assets

The Court has discretion in the division of all assets in divorce. It will take into account the assets and resources of each spouse at the time of the divorce and their likely assets and resources in the foreseeable future and decide what is fair.

For instance, the assets may be huge and it may not be fair to exclude them in their entirety. Sometimes doing so would leave one spouse at a huge disadvantage in terms of lifestyle 'depreciation', i.e. their standard of living would be greatly reduced from what it was during the marriage and from what the other spouse continues to enjoy after the marriage. This is usually relevant only in 'big money' cases.

It may also be that leaving the non matrimonial property out of account would mean there would not be enough matrimonial property left to meet the other spouse's needs.

The Court also has to consider the way the husband and wife organised their financial affairs during the marriage, and whether the non-matrimonial property was kept separate in any way. Questions the Court will want to know about the assets may include:

- Was it a valuable heirloom destined to be passed down the generations?
- Was it a business partnership involving others' interests?
- Was it held in a separate account or mixed up with matrimonial assets in a joint account?
- Or was it just a modest sum which should not merit special treatment?

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The end result

Need will always override the exclusion of pre-marital assets, indeed it even overrides the principle that matrimonial property should be divided equally. If a spouse cannot re-house his or herself and the children appropriately, or meet his or her other capital needs with their share of the matrimonial property, the Judge will look to bring some or all of the non-matrimonial capital into the pot to meet that need.

In short, it will always depend on the circumstances of the case.

I'm considering divorce, what will happen to my assets?

If your marriage has broken down and you are considering divorce, you need to do the following:

- Determine whether there were any assets you owned before the marriage that should be kept separately
- Determine the value of those assets at that time
- Seek advice as to whether those assets are likely to be excluded from the 'matrimonial pot'

The whole process is discretionary and there are lots of factors that will be taken into account. It is important that you have a specialist Family lawyer to guide you through the disclosure and assessment steps in order to get an idea of where you stand.

Fisher Meredith's Family Law Department has a dedicated and experienced team of solicitors who would be happy to advise you on how your assets will be distributed following divorce.

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