What If I have to go to court?

In some cases mediation or collaborative practice may not be suitable or they may have been tried and failed. In these circumstances, the parties will instruct independent solicitors. When we are instructed upon this basis, we always try to negotiate a settlement for you without going to court. Sometimes this isn't possible, and in these circumstances an application to the court will be necessary so a judge can decide on the settlement.

Lodging the application

By this stage, the divorce petition will have been issued and served. Although the petition contains the application for financial relief, the financial proceedings are 'activated' by issuing a Form A at court. A fee of £240 is also payable.

Leading up to the first court hearing

Once the Form A has been lodged with the court, the court will fix a hearing date between 12 and 16 weeks ahead. In the weeks leading up to the hearing, you must collate a large amount of information regarding your own finances. You must also consider what you realistically want to achieve out of a settlement, for example in relation to the marital home.

You will have to complete, file at court and exchange a financial statement at least 35 days before the hearing. This document requires details of your financial resources, liabilities, investments and employment. Certain documentation must also be included such as your bank statements and payslips.

At least 14 days before the first hearing, each party must file at court and serve on the other party a concise statement of the issues, a chronology and a questionnaire setting out any further information required. Either party can also file a form stating whether they will be in a position at the hearing to negotiate and treat the appointment as a financial dispute resolution hearing.

At the first hearing

The objective is to define and narrow the issues in dispute, and both parties must attend. The District Judge will determine the extent to which each party's questionnaires are reasonable. The Judge will give directions about the valuation of assets, the obtaining and exchanging of expert evidence and directions about any further evidence to be adduced. A date will also be given for the next hearing called a financial dispute resolution hearing.

Financial dispute resolution hearing (FDR)

In addition to complying with any directions given at the first hearing, both parties have to file with the court 7 days before the FDR, details of all offers and any responses to them. The District Judge will attempt to help you reach a realistic compromise by providing an indication of how the court would deal with a particular issue. At this stage negotiations are encouraged.

If a settlement can be achieved, the details will be embodied in a Consent Order. If it cannot, the details of all offers and responses are removed from the court file and a date is set for the final hearing.

Final hearing

The applicant (the person who filed the Form A) must file and serve on the other side an open statement at least 14 days before the final hearing. This must contain all issues in dispute and details of the orders you will be asking the court to make. The other side must, within 7 days, file their open statement.

Before the hearing, a form which sets out the costs incurred will also be filed at court and sent to the other party. The final hearing will be held in the District Judge's Chambers and will be in private. In most cases a barrister is instructed to perform the advocacy. The Judge will hear the case and then make an order and provide his/her reasoning for the decision reached.

Costs

In family matters, each party bears their own costs unless there is clear evidence that one party has acted unreasonably during negotiations. Costs can escalate very quickly – the court will also keep a close eye on the level of costs being incurred by requesting information about costs at each stage.

For more advice on these issues contact a member of the family team on 0345 128 6960 or email welcome@freeths.co.uk.