

After there has been a break down of marriage, dealing with the finances can raise some of the most difficult issues. Often, issues about property and money are the main sources of disagreement and stress.

However, we hope to guide you smoothly through all of the factors relevant to the process to ensure that your interests are protected.

This leaflet is designed to be read in conjunction with our leaflet about aliment (the payment of regular maintenance) which is also available to download from the family law section of the Inksters website. The website also contains information about the financial support of children.

Here, we will therefore assume here that maintenance for spouses and any children has all been agreed, and you need advice on dealing with focus on advice on how to divide up the items of property, including the assets and debts, of the marriage.

Although this sheet uses terminology associated with the breakdown of a marriage, very similar provisions apply to the breakdown of civil partnerships.

The goal – a fair division of matrimonial property.

On a very general basis, what both sides should be aiming to achieve is ‘a fair division of net matrimonial property’. As always, phrases like this are technical and there are lots of aspects to the definition and each part of the phrase.

However, throughout the process, it is a ‘fair division of matrimonial property’ which is what we are to achieve.

There are various steps along the way, and the next four questions will help us through that process:-

1. What is the ‘relevant date’?

As a general overview, what usually happens is that there is a separation date, ie. when you separated and stopped living together as man and wife. This date is important as it referred to as the “relevant date”. Apart from the family home and life policies which are valued on an up-to-date basis, most other assets and debts are valued at the separation date.

Therefore, we need to know the separation date.

The separation date is often the date when you stopped living together but there are other factors which may mean you separated at a different time. Inksters can advise you on this with reference to your own personal circumstances.

2. What is the 'matrimonial property'?

We then need to know what needs to be valued. That is, what assets and debts were actually 'matrimonial property'.

So, once we have the separation date, we then need to list all of the assets and debts of the marriage which were matrimonial property when you separated. This includes assets or debts in the sole name of either of you, or in your joint names.

We will discuss with you what assets and debts actually constitute matrimonial property but, very generally, it usually includes items such as the matrimonial home, the contents, savings, shares, pension funds, motor vehicles, life policies, etc. Debts are also taken into account and therefore the mortgage, credit card debts, loans, etc should also all be considered as potentially being part of the reckoning.

The assets and debts must be 'matrimonial property' and because that phrase has its own special definition, you need advice as to what should be included. It would not normally include, for example, gifts or inheritance from a third party.

So, the first step is to ensure that the separation date is known. Thereafter, investigations are made to make a list of which assets and debts should be taken into account.

3. What are the values of the items of property?

Once the assets and debts are listed, they are then valued.

As you may expect, the valuing of assets and debts can sometimes be technical. If you have, for example, a mortgage statement or a bank statement showing what was due to the bank or in an account on the date of separation, or the surrender value of a life policy, then that would be very helpful. A surveyor can be asked to value the matrimonial home and we can obtain the technical valuations required in relation to pension funds.

As much paperwork as you can gather together would of course be extremely helpful. We can provide you with a letter of authority to get financial information from financial institutions like banks or pension providers.

Once a list has been drawn up of the assets and debts which are matrimonial property, and once all of the values are entered for these assets and debts, then we can see what the total assets and debts are.

An assessment can then be made as to what would be 'fair division' of the total matrimonial property.

4. What is a 'fair division' of matrimonial property?

A fair division is usually taken to be a 50/50 split unless there are special circumstances to the contrary. A fair sharing might include a matrimonial home being transferred to one party (and perhaps that party taking over the mortgage) or it might involve a pension-sharing agreement or maybe a transfer of some other item of property.

How we proceed

Each case is unique. We will discuss with you what you aim to achieve and whether that can be done, bearing in mind a fair division of matrimonial property. We will always work towards getting the best result for you.

Therefore, as a first step we ask you to gather together as much information as you can as to what assets and debts were potentially matrimonial property in your sole or joint names as at the date of separation.

Sometimes, parties agree to split the finances or settle things themselves, or do away with the above process. It is important to consider the fact that, without going through the above process, no-one can say if the agreement is fair and reasonable or if it is a fair division of matrimonial property. Parties must weigh up whether they are comfortable with the risk of losing out on important financial claims which it would be difficult or impossible to put right once divorce has been granted. There's therefore a health warning to doing things that way, but as long as you realise that, it is your choice as a client to proceed in whichever way you wish. We recommend you speak to us before committing to an agreement.

Often, all of the above process takes place with the other party instructing a solicitor and both sides trying to agree what is (or isn't) matrimonial property, and what the valuations are. Once the list of matrimonial property is agreed and the values entered, negotiation then takes place as to what would be fair division and how that could be achieved. We take your instructions throughout that whole process.

Once the list of matrimonial property has been drawn up and agreed with the other side, and a fair division has been negotiated and agreed, the agreement is often set down in a "Separation Agreement". This sets out in writing what has been agreed and would then be signed and implemented. For example, this might include the sale of the house and the splitting of the proceeds, or one party taking title to the house with perhaps the mortgage, or getting a share of a pension, or transferring a policy into their name. Whatever is needed, we can go through all of the technical requirements to ensure that everything runs as smoothly as it possibly can.

How to Get Started

To get started, you can help us by thinking about the following three questions:-

- 1) What is the separation date?
- 2) Which assets and debts existed then and are matrimonial property?
- 3) Do you have valuations for any of these items?

Inksters' website has a downloadable form entitled 'Schedule of Matrimonial Property' which sets out what we need to know from you to help deal with your claim. This is an appendix to this leaflet at page 4 and it can be downloaded separately from www.inksters.com/familylawresources. You may wish to fill in the form and e-mail it to us, or print it out and post to us.

If you want any advice or wish to discuss anything further, please contact our Gus Macaulay on 0141 229 0880 or e-mail gus@inksters.com.

ANNEX: QUESTIONNAIRE ABOUT MATRIMONIAL PROPERTY

Your Name _____

Your Address _____

It is important that all the values are shown for the date you and your partner separated. If you have not yet separated then please use the most recent value for each asset and give the date of the information.

Date of Separation:		Today's Date:	
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If any assets were wholly or mainly acquired as a gift or inheritance to either of you please show this, as that affects how far they might be considered as matrimonial property.

1. Matrimonial Home	
Address:	
Is it owned/rented?	Owned/rented
Who is the owner/tenant?	You/your partner/joint
Have you had this valued if owned?	YES/NO
If, YES has this been by an Estate Agent?	YES/NO
Or by a Surveyor?	
What was the date of the Survey?	
What is the value they indicated?	£
If not, what do you think the house might fetch if it was sold now?	£
If you have obtained a survey of the property, please let us have a copy.	

2. Mortgage

Please give the name, address and loan reference number for the Bank or Building Society who advanced you the money to pay for the house.	
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How much of the loan is outstanding? If you have a recent statement showing how much is outstanding, please let us have a copy.	£
If there is more than one loan secured over the house, please give details of any other lenders involved and the outstanding balance.	

3. Holiday Home/Timeshare/Other Property

Please give details of any holiday home/timeshare/other property you owned and the value of this. Please show if the value is an estimate or it has been suggested by a professional and if so, the identity of the professional involved.

Who is the owner:	You / Your Partner / Joint
Who has the documents of ownership?	

4. Bank Accounts

Please give details of credit balance in any Bank accounts you or your partner held. Please indicate if the accounts are yours, your partner's or joint.

<u>Name</u>	<u>Address</u>	<u>Account No.</u>	<u>Balance (at date of separation)</u>	<u>Balance (now)</u>

If you have copies of statements confirming these figures please let us have them.

5. Savings Accounts

Please give details of credit balances in any Savings Accounts you or your partner held. Please indicate if the accounts are yours, your partner's or joint.

<u>Name</u>	<u>Address</u>	<u>Account No.</u>	<u>Balance (at date of separation)</u>	<u>Balance (now)</u>

If you have copies of statements confirming these figures please let us have them.

6. Shares & Investments

Please give details of any shareholdings or other investments held by you, your partner or jointly and their value giving a note of whose name they are in. Please indicate if this value is an estimate and if not, the identity of whoever has given you the information.

<u>Company</u>	<u>Shareholdings & Investments</u>	<u>Value</u>

7. Household Contents

Please indicate the value of the household contents. Let us know if this is an estimate or, if it has been valued professionally, the identity of the valuer. The value to use is the resale, not the replacement value.

Have any of the contents already been shared out?

8. Vehicles

Do you own a car?	YES/NO	Does your partner own a car?	YES/NO
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If YES, please detail the model and registration	<u>You</u>	<u>Your Partner</u>
What was the value of the vehicle?	£	£
Is this an estimate:	YES/NO	
If NO, was the value provided by a professional person?	YES/NO	
If so, could you supply a copy of the valuation.	YES/NO	

9. Pension Fund

Have you been in an occupational pension scheme?	YES/NO
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If YES, could you please attach or now request & forward to us a cash equivalent transfer value for this if possible, from the period you have worked during the marriage up until the separation. (You can ask the pension fund for this although they may not provide it calculated for the exact period. An appointment may be necessary).

Have you had a private pension policy?	YES/NO
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If YES, please give details of the Company involved and attach or request and provide a cash equivalent transfer value for this if possible, from the period you have worked during the marriage up until the separation.

Was your partner in an occupational pension scheme?	YES/NO
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If YES, for what period of time and from what employer during the time you were married and lived together?

Was your partner in a private pension policy?	YES/NO
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If YES, please give details if you can.

Are there any state scheme pensions rights for you? Or your partner?	YES/NO
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10. Endowment Policies

Please give details of the name, address and policy number of each policy and their surrender value. If you would like us to obtain the surrender value please let us know and we will send you a mandate to sign to allow us to do this.

If you have obtained a surrender value could you please let us have a copy of this.

<u>Company</u>	<u>Policy no.</u>	<u>Surrender Value</u>	<u>In name of Wife/ Husband or Joint</u>

If any of the Policies were taken out before the marriage, could you please show the date the policy was started.

Who has the original policy documents?

11. Business Assets

Do you have any interests in a business that started after the marriage?	YES/NO
If YES, please give details and attach accounts for the last 3 years if possible.	
Does your partner have any business interests which started during the marriage?	YES/NO
If YES, please give details.	

12. Other Assets

Please give details of any other assets either of you owned or have any significant value.

LIABILITIES

Please try to provide copy statements for any liabilities

Do you have any Bank loans?	YES/NO
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If YES, please give details		
<u>Bank & Address</u>	<u>Account number</u>	<u>Balance</u>

Does your partner have any Bank loans?	YES/NO
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If YES, please give details		
<u>Bank & Address</u>	<u>Account number</u>	<u>Balance</u>

Does you have any Bank loans jointly ?	YES/NO
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If YES, please give details

<u>Bank & Address</u>	<u>Account number</u>	<u>Balance</u>

Do you have a car loan?	YES/NO	Did your partner?	YES/NO
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If YES, please give details of lenders and amounts outstanding.			
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You	Lender:	Amount: £
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Your Partner	Lender:	Amount: £
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Do you have any credit card debts?	YES/NO
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If YES, please give details

<u>Bank & Address</u>	<u>Reference number</u>	<u>Balance</u>

Does your partner have any credit card debts?	YES/NO
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If YES, please give details

<u>Bank & Address</u>	<u>Reference number</u>	<u>Balance</u>

Please give details of any other loans owed by you or your partner at the date of separation.

Have any of the assets gone up substantially in value since you separated?	YES/NO
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If YES, please give details.

Have any of the liabilities been reduced more by one or other of you since the separation.	YES/NO
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If YES, please give details.

Have any of the assets been wholly or mainly acquired as a gift or inheritance or from pre-marriage resources by either of you?	YES/NO
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If YES, please give details.

Did either of you own any of the assets before the marriage?	YES/NO
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If YES, please give details.