

## Addressing Asset Division on Divorce

This is a follow on article from that entitled **“Why is My Income Relevant on Divorce?”** which set out the considerations when deciding how to divide matrimonial assets on divorce. The first of the factors set out in legislation is:-

*“The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future including in the case of earning capacity, any increase in that capacity which it would, in the opinion of the court, be reasonable to expect a party to the marriage to take steps to acquire.”*

The first stage in addressing a financial settlement is for both parties to provide full, frank and clear financial disclosure. This can be done on a voluntary basis or within the framework of court proceedings. Disclosure will often be done using the court financial statement, known as a Form E. Where financial disclosure is incomplete, there are various tools to force disclosure.

Depending on the complexity of the assets, it may be necessary to involve experts to provide information about the value of property, businesses, pensions and/or trusts.

As well as current assets a court will also consider other resources available, including mortgage capacity or perhaps an imminent inheritance although there is much case law surrounding non-matrimonial assets and you should seek advice if this is relevant to you.

As well as assets a court will be concerned about any liabilities. There is a distinction between a soft and a hard loan. Hard loans are those involving independent third parties such as loan providers and credit card companies. A soft loan describes one from a family member and could involve a Judge deciding whether this is a gift or a loan and whether it is a loan which requires repayment. You should ensure you seek professional advice at the point of making or receiving funds from a family member to enable these to be protected in the event of a divorce.

For further information on the factors affecting financial settlements on divorce, please see my other articles dealing with each factor in detail. In particular, I would refer you to my article on non-matrimonial versus matrimonial assets.