

## Documenting A Financial Settlement

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Following a separation, if agreement regarding financial issues has been reached, the agreement should be documented. How this is dealt with will depend on whether divorce or Judicial Separation proceedings have been started or will be started imminently.

If no divorce or Judicial Separation proceedings have been started (for example, if the parties have agreed to wait until they have been separated for two years before starting proceedings), an agreement reached in mediation is documented in a Memorandum prepared by the mediator. If agreement is reached by the parties directly or through negotiations between solicitors, a **Separation Deed** can be drafted. In some cases, for example where matters are very straightforward and there are few assets and no maintenance provisions, it may be sufficient to exchange open letters recording what has been agreed. We will advise what is appropriate in your case.

If divorce or Judicial Separation proceedings have already been commenced, the agreement will be set out in a draft **Consent Order**. Once proceedings have reached the Decree Nisi stage, a Court Order is drafted, setting out what has been agreed. Both parties and their solicitors sign the draft Order and this is submitted to the Court. The Court must check whether the agreement is fair before making the Order. It does this by reading a summary of your and your spouse's financial position; this is called a Statement of Information and is set out on a standard Court form (Form M1). If the settlement is approved by the District Judge, the Order will be made "by consent". You do not usually need to attend Court for the Consent Order to be made.

Generally speaking, it is preferable to obtain a Consent Order within divorce (or Judicial Separation) proceedings sooner rather than later. There are two main disadvantages with a Separation Deed as opposed to a Consent Order. The first disadvantage is that if a Separation Agreement is breached, it is not enforceable by the Family Courts. The second disadvantage is that if later on there are divorce or judicial separation proceedings, the Court has very wide powers to decide financial issues. In that way there is no finality with a Separation Deed as there is the possibility that it may subsequently be overturned. However, although it is possible for the Court to completely override what is in the Separation Deed, it is unlikely to do so if both parties have made full and frank financial disclosure and taken legal advice to ensure that the Separation Deed takes account of all the factors which the Court is required by law to consider.

Whether or not you can initiate divorce proceedings immediately with a view to obtaining a Consent Order will depend upon your circumstances. We can advise you whether you or your spouse has grounds to petition for divorce or Judicial Separation immediately.