

Preserving and Protecting Financial Assets on Divorce

By Lucy Loizou

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When going through a divorce it is common to experience the fear of being left penniless by your spouse. This may be because he or she will dispose of assets so that no money is left to divide on divorce or by doing things such as transferring property into someone else's name, emptying bank or investment accounts, disposing of crypto-currency or recklessly spending. This is something that family lawyers often come across. When emotions are running high it is hard to distinguish between an empty threat and an actual premeditated plan. There is often a very fine line and it requires careful consideration with a specialist lawyer.

This article looks at what can be done to preserve assets on divorce. Reference to divorce and spouse should also be read as reference to civil partnerships dissolutions and civil partners.

If you are worried that your spouse or partner may dispose of assets at the time of any separation or divorce it is very important that you quickly seek independent legal advice from a family law specialist. Often a solicitor will need experience in international cases as the assets that will need to be protected may be located offshore or maybe at risk of being transferred abroad. Time is of the essence especially where money can be moved across continents at a click of a button on the internet or by a simple telephone call. It is fundamentally important to ensure that assets are available for division and for the implementation and enforcement of any final family court orders.

The Court has several extensive powers namely:

- The power to prevent a transaction. If the Court is satisfied that your spouse is about to make any disposal or transfer assets including out of England and Wales or similarly deal with them, it has the power to make an order restraining your spouse from taking these steps. It can also prevent a transfer of a property from taking place although alternative steps via the Land Registry might also be examined.
- The power to grant an immediate freezing injunction. Such an injunction is an interim order and prevents the disposal of assets during court proceedings. This can and will often include freezing assets worldwide. In some European countries assets are automatically frozen on separation pending determination of the marital financial claims. This is not the case in England and Wales.
- The power to grant a Search Order. This order may be made where it appears that your spouse has been or is in possession of undisclosed documents that are relevant to the family finances. There needs to be a risk that your spouse may destroy these documents before the case is decided. The Court can order the removal, copying and

photographing of such documents from your spouse's premises. These types of orders are rarely made due to their extreme nature so great care is needed.

- The power to grant an injunction to restrain a person from leaving the country, for instance because they will leave with assets, will avoid complying with a Court order or their departure will materially prejudice their spouse's financial claim. This may include the surrender of a person's passport.

A word of caution. If you are thinking of going to Court to obtain one of these orders '*without notice*' to your spouse, that is, without first notifying your spouse, you must be sure that your application is likely to be successful. Corroborating evidence is fundamental. You should take specialist legal advice. The orders are draconian in nature, so judges will not make them unless absolutely necessary and often without some (albeit limited) notice and notification to your spouse. If you make such an application and fail, you could be ordered to pay your spouse's costs, damages and it could also impact the outcome of your overall case.

The law and practice on this area has changed a great deal in recent years. The higher courts are becoming increasingly critical of inappropriate applications. In addition, the importance of great procedural care in securing assets cannot be underestimated, particularly with worldwide freezing orders affecting foreign courts, assets and nationals/residents. Compliance with procedural rules is fundamental

There may be other protective steps that you can take with the advice of your solicitor, including:

- The Court ordering that a statement is prepared by one spouse regarding the value and nature of assets in the UK and abroad
- A person attending Court to submit for cross-examination in respect of their financial position;
- A person being ordered to deliver papers or chattels to solicitors
- A person signing a letter of authority to a bank to disclose information
- Registering a restriction, notice or caution against the title of a property to prevent dealings with that property. For example, if the property at risk is the matrimonial home, it may be possible to apply for a family home rights notice. Alternatively, if the property is in the sole name of one of one spouse and is not the matrimonial home, conveyancing advice should be sought to ascertain whether any form of restrictions or notices can be registered against the title, including Notice of Pending Land Action based on there being ongoing financial proceedings alongside the divorce
- Agreeing to a sale of a property on the basis that the proceeds will be held in escrow, by solicitors or by a trusted third party

We are regularly instructed to advise clients in relation to these specialist issues and our international expertise and experience allows us to assess the protection required and most importantly whether such protection will be granted by a Court. To talk to one of our lawyers about your case please contact us directly.

Lucy Loizou

lucy.loizou@iflg.uk.com

The International Family Law Group LLP

www.iflg.uk.com

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iFLG

Hudson House
8 Tavistock Street,
London WC2E 7PP

Contact

+44 (0) 203 178 5668

enquiries@iflg.uk.com