

## Relationship property and the changes ahead

February 2019

The Property (Relationships) Act 1976 provides rules on the division of property when a relationship ends on separation. The Law Commission has recently reviewed this Act, making a number of key proposals in an Issues Paper published in November 2018. The Commission is currently reviewing submissions from the public on its key proposals with a view to making its recommendations to Government in 2019.

The key proposals outlined below aim to achieve a more just division of property at the end of a relationship.

### KEY CHANGES

***The family home should no longer be divided equally simply because it was used by the couple as a family home.***

The Law Commission proposes that if one partner owned the family home before the commencement of the relationship, only the increase in value of the family home occurring during the relationship should be shared equally upon separation.

***A partner may share in the other partner's income after separation.***

The Law Commission proposes the concept of a Family Income Sharing Arrangement (**FISA**) to ensure that where the couple have children or have been in a relationship of a long duration, the partner who earns less during the relationship is not economically disadvantaged on a separation. This is achieved by allowing that partner to share in the income of the other partner for a period of time after separation.

A court will be able to put in place a FISA if:

- the couple have children together; or
- the couple have been in a relationship for 10 years or longer; or
- one partner has sacrificed his or her career to make contributions to the relationship or helped the other to build his or her career.

Where these circumstances exist, it is proposed that a FISA will equalise the partners' incomes following separation using a statutory formula for a set period of time. The proposed period of time is half the length of the relationship with a maximum period of five years.

***Courts to have greater powers in relation to trusts.***

The Law Commission proposes that the courts will have broader powers to grant relief when a trust holds property that was produced, preserved or enhanced by the relationship. This includes powers to order:

- One partner to pay compensation to the other.
- Trustees to distribute capital from the trust to one of the partners.
- A variation to the terms of the trust to benefit one of the partners.
- Some or all of the trust property is resettled on to a new trust or trusts.

***Children's interests should be given priority.***

The Law Commission proposes that the Courts should make the best interests of the children to the relationship a primary consideration under the Act. It is proposed that the Act will specifically include provisions to ensure that there is an overarching obligation on the Courts to have regard to the best interests of children.

A key proposal from the Commission is that the primary caregiver and children should be given a right to stay in the family home immediately after separation.

### HOW WE CAN HELP

We can assist you with your relationship property queries and provide guidance on how the above proposals may affect you. We can also provide comprehensive advice on the process of entering into a relationship property agreement and important considerations that you should take in to account.

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