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Consent Order or Separation Agreement – What’s the Difference?



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In England and Wales – Under the [Matrimonial Causes Act 1973](#) – the very fact that a couple is married will mean that they have financial claims against one another for capital, income, pensions and a claim against the estate should one party pass away. These claims need to be addressed and/or dismissed and it is therefore imperative to have any financial arrangements formerly recorded in either a consent order or separation agreement.

Both documents can be drafted following the parties' direct agreement whether negotiated in person or with the aid of a mediator or solicitor. However, agreements should be reached following full financial disclosure to enable a legal professional to provide robust advice on the merits of any settlement.

When an agreement is reached which document is right for you?

Consent Order

A consent order is the document which is produced to the court after a conditional order (formerly decree nisi) is pronounced within any divorce proceedings. This, in turn, sets out the terms of the parties' financial agreement in a binding order. This document is filed at court with a snapshot of the couple's current financial circumstances for consideration by a judge. Once the order has been approved by a judge the terms within the same become enforceable. The consent order, therefore, provides separating couples with financial protection and, by its very virtue, will be enforceable should one party try to renege on the terms previously agreed.

A consent order (attaching a pension-sharing annex) is also required in cases where there is pension sharing within the agreement reached between the parties.

Separation Agreement

A separation agreement (also known as a Deed of Separation) is similar to a consent order and includes terms of the financial arrangements reached between the parties. However, these documents are entered into when the parties are not yet ready to dissolve their marriage. Before no-fault divorce came into practice on 06 April 2022 – the most common reason for a separation agreement was where a couple wished to wait until they had

been separated two years before filing for divorce to avoid any blame falling on one party. This is no longer an issue now that we have 'no-fault divorce'. Nonetheless, there are some circumstances where a separation agreement still has a place depending on the circumstances.

Differences Between Separation Agreements and Consent Orders

The main difference with a separation agreement is that they are not approved by a judge and the terms cannot be enforced in the same way if one party breaches the agreement or reneges on the terms. The financial claims remain open and in force until they are formally dismissed by way of a consent order. Therefore a separation agreement does not provide the finality that a consent order does. Many separating couples enter into a separation agreement and then later, once divorce proceedings are issued, have the same recorded into a consent order.

This is often a paperwork formality. However, sometimes this exercise can cause one party to want to look into the arrangements once again especially if there has been a significant change in circumstances since the agreement was entered into. The separation agreement would not automatically be upheld by the court in subsequent financial proceedings in the same way as a consent order would be.

Importance of Recording Financial Agreements

Recording your financial agreements following separation is imperative. If parties wish to agree on financial matters prior to a divorce petition being issued then a separation agreement provides a good interim position. However, in the event the marriage has broken down and there is no prospect of reconciliation, a consent order is the most sensible option to finalise the financial claims couples have against one another within their divorce proceedings and dismiss any future claims.

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If you want to speak to one of our specialist [family lawyers](#) at Lester Aldridge please call 01202 786161 or email online.enquiries@LA-law.com.