Compass Resolution Network

GUIDANCE NOTES ON FINANCIAL DISCLOSURE

Our recommendation

The quality of mediated outcomes will, to a large extent, depend on the quality of financial information you provide in mediation. However, it is always a matter of degree and the amount of information needed will depend on many factors, such as the complexity of your case and size of assets. Amongst other things, you will need to take into account the costs involved in obtaining this information since these should be in proportion to what is at stake.

Before negotiations

Before sensible financial negotiations can begin, you will need an accurate picture of your financial circumstances. Again, it is a matter of degree. Simply put, you are under a duty to make full and frank disclosure of your financial circumstances, which means the provision of all information and supporting documentation relevant to the issues and proportionate to the assets and complexity of your case.

Financial summaries and court orders

Hopefully, negotiations will lead to a mediated outcome followed by a court order by consent obtained by your solicitor. When the Court Order is placed before the District Judge for his/her approval, he/she has a duty to consider your financial circumstances and you have a duty to provide these in a standard Statement of Information that will be submitted with the draft Order.

The Judge is not under a duty to make a detailed investigation if you and your partner have both had legal representation on the basis that your solicitors will have had a better opportunity than the judge to examine all your circumstances before advising you and drafting the Order.

If it is subsequently discovered (after the Court Order has been made) that the Order is based on inaccurate information which might have materially affected the original mediated agreement, there is a risk that the Order could be set aside. There will of course be cost implications to bear in mind. In other words, ***you and your partner owe a duty to the Court to make a full and frank disclosure of your financial circumstances***.

Third party

Even though you are in mediation it is worth you knowing that if mediation failed for reasons of non-disclosure of financial documents, someone who is not a party to the Court proceedings cannot be ordered to disclose or produce documents nor can somebody be joined to the proceedings solely to assist in the financial discovery process.

However, a witness can be required to produce relevant documents by a Subpoena, although this does not give a right to inspect or copy documents which will stay within the precincts of the Court.

A Bank Official can be subpoenaed to produce Bank ledgers and internal memoranda relating to a given customer under the Bankers Book Evidence Act 1979. This power does not extend to correspondence files, pay cheques or paying-in slips and the Bank is entitled to be reimbursed expenses by the person applying for the Order. You would be better applying for a Production Appointment (see over).

Unless a mistress/cohabitant has been joined in the Court proceedings, they cannot be ordered to disclose information, documentation or to file an Affidavit, but can be ordered to attend at or before the hearing for examination. However, the information required must be relevant to the issues.

The Court will not grant a Subpoena if it is likely to be oppressive to the witness.

Conclusion

It is important that both we and the Court (if you intend to ask the Court to make a final financial order) have a full and relevant disclosure of yours and your partner's financial circumstances. Having said this, the extent and degree of disclosure will depend on a number of factors already mentioned. It is always worth bearing in mind the question whether, what is being asked for is relevant and proportionate to the assets and issues being discussed in mediation.

It is always as well to be very clear about what you are trying to achieve.