



## A guide to family law from



**WHISKERS LLP**  
SOLICITORS & NOTARIES

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### IN BRIEF

#### JUDGE USES DISCRETION IN CONTACT PROCEEDINGS CASE

In custody and guardianship cases, the courts always attempt to ascertain what would be in a child's best interests. Recently, a 14-year-old girl's father attempted to have her court appointed guardian changed, but the judge used his discretion to rule that things should remain as they were because the relationship between the girl and her existing guardian was a good one.

#### COURT OF APPEAL BACKS PRE-NUP

Pre-nuptial agreements have never had legal effect in the UK, but the Court of Appeal has issued a shock decision confirming that pre-nups do need to be taken into account on divorce. The decision makes an even stronger case for considering protecting wealth by entering into a pre-nup.

## DIVORCE AND THE DOWNTURN



**Financial agreements on divorce can take a wide variety of forms and, in a time of economic downturn, how you choose to divide your assets demands particular thought.**

A financial agreement entered into now may turn out to be inappropriate if circumstances change, so careful thought needs to be given to this possibility when deciding what form the financial arrangements on divorce should take. Settlements often involve periodical payments, which can normally be varied when appropriate. If you do wish to make an application to alter a periodical payment order, it is important to do so promptly. The court has the power to backdate any alterations it makes to an order but will normally only do so from the date the application was made. It does, however, have to take into account any changes in circumstances since the original order was made. It is possible to apply for a downward or upward variation of periodical payments.

Agreements over the sharing of capital are normally difficult to vary, so the current economic situation is likely to make the courts more sympathetic to the idea that husbands and wives should share the risk of holding assets that are subject to rapid changes in value (such as a business or shares). This may lead to a couple having shared interests long after they are divorced. It may also make it more difficult to achieve a 'clean break', as neither party may be willing to give up an interest in assets which are unlikely to fall in value. If a couple does agree that one of them should have less risky assets whilst the other keeps the interest in the riskier ones, then the variation in risk is likely to be reflected in the respective proportion of the total assets retained by each.

**Obtaining a satisfactory outcome in a matrimonial settlement depends on skill and experience. If you are thinking of divorce or separation, contact us for advice before you take action.**

# Family Law **ACT NOW**



## GRANDPARENTS ARE NOT PARENTS

The Court of Appeal overturned a residence order which would have placed an 8-year-old boy with his grandparents: the judge had failed to appreciate that parents have a natural right to bring up their children and he would be depriving the child of a family life with his mother and half-brother.

**We can represent you in all child custody proceedings.**

## CHANGE IN VALUE DOES NOT MEAN CHANGE IN SETTLEMENT

**Two recent cases illustrate that divorcing couples with joint assets that may be subject to wide fluctuations in value should think very carefully about who gets what.**

The first concerned a businessman whose company shareholdings had plummeted in value. He failed in his attempt to reduce the divorce settlement agreed with his wife.

As a rule, variations in asset values after a capital settlement is agreed cannot be a basis for revision of the



financial settlement, although where one party provides misleading or incomplete information about their assets, an adjustment may be possible.

In the second case, an ex-wife who agreed a financial settlement with her ex-husband in 2007 went to court to renegotiate their agreement. In it, he had retained shares in a company that was valued at £800,000. However, within months of the settlement, the company had been sold for nearly £4 million. She claimed he had misrepresented its true value. The claim was rejected.

**Financial negotiation in divorce settlements can be complex: contact us for expert advice.**

## £250,000 MAINTENANCE PAYMENT INCREASED

**The ex-wife of a wealthy accountant, who was awarded £250,000 a year in maintenance from her ex-husband, has gone back to court and won an increase of £100,000 a year, after she showed that her former**

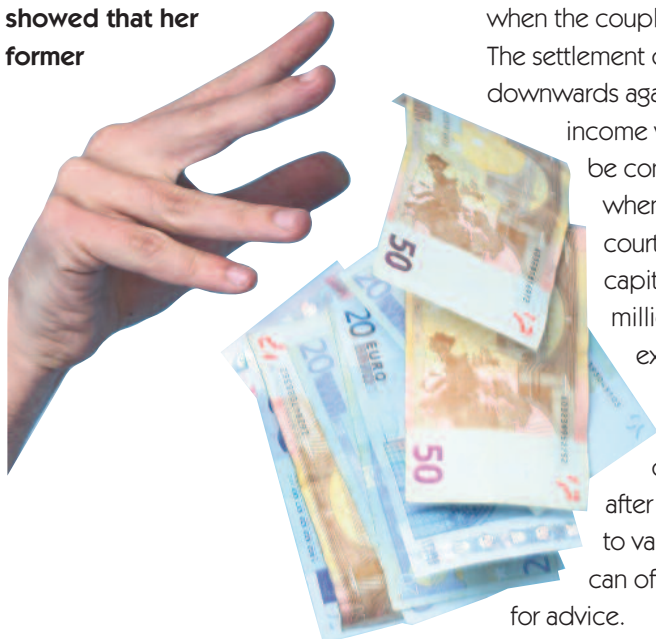
**husband's income had risen from £750,000 to £1.1 million per year.**

The case is somewhat unusual in that the wife had been a solicitor with a leading City firm before giving up her career when the couple had children.

The settlement could be revised downwards again if the ex-husband's income were to fall and is due to be considered for variation when he retires. In 2006, the court awarded the ex-wife a capital settlement of £3 million plus the share in her ex-husband's future income.

When financial circumstances change after divorce, an application to vary maintenance payments can often be made. Contact us

for advice.



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