



# Myerson Family

Our guide on  
Reviewable Dispositions and Setting  
Aside Transactions

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# Setting Aside Transactions

## A discussion regarding reviewable dispositions under s.37 MCA

S 37 Matrimonial Causes Act 1973 (MCA) sets out the transactions capable of being set aside by the court on the basis that they amount to a “reviewable disposition”.

### What is a Disposition?

A disposition in the context of s 37 includes any conveyance, assurance or gift of property but does not include any provision contained within a Will or codicil. It is not restricted to property in England and Wales and includes real and personal property abroad. To obtain an Avoidance of Disposition Order, the disposition must be “reviewable”.

### When are dispositions “reviewable”?

A disposition is considered to be reviewable unless it was made for valuable consideration to a person who, at the time of the disposition, acted in good faith and without notice of any intention of the respondent to defeat the claim. The statutory test is set out at MCA 1973, s 37(4) and if it is not satisfied, the court does not have the power to set aside the disposition.

If a reviewable disposition took place less than three years before the date of the application, and the disposition would have or has had the consequence of defeating the claim, the court presumes that a party acted with the intention of defeating the claim.

If a spouse sells a property to a third party at open market value and that third party has no knowledge that the parties were going through divorce proceedings, or about to embark on such proceedings, this is not a reviewable disposition capable of being set aside by the court. However, if a spouse sells a property at an undervalue to a relative who does know about the couple's divorce or that their marriage is in difficulties, then such a transaction may be regarded as a reviewable disposition provided it took place within the last 3 years of the date of the application.

## Intention to defeat or reduce applicant's claim for financial relief

It is not possible to use section 37 of the Matrimonial Causes Act 1973 to attempt to set aside every transaction made. An application should only be made if the transaction is so detrimental to the applicant's case, that it makes that claim negligible or virtually non-existent as a result. For example, if a spouse transfers an apartment to his brother at below market value within 3 years of a financial relief application being made, this will only be regarded as a reviewable disposition if the effect of that sale would defeat the applicant's claim for financial relief entirely. If there are other assets which exceed the value of the apartment, it is unlikely that a section 37 application would be proportionate or necessary.

Proceedings for a financial order must have been issued at the time of the application to set aside a reviewable disposition. The jurisdiction to set aside is applicable only to existing applications for a financial remedy and not where a financial order has already been made. If proceedings have not been issued, this can be remedied either:

- By issue of Form A on the date of the application, or
- An undertaking to issue Form A as soon as the application is heard.

## What is the effect of an Avoidance of Disposition Order?

If the court finds that there has been a reviewable disposition, the court may:

- Declare that the transaction is set aside.
- Make such consequential directions as it thinks fit for giving effect to the orders including ordering a third party to pay back any cash received, ordering a third party to sign a transfer of property conveyance, or ordering a third party to hold the asset or the sum of money to the courts order.

# You're in safe hands!

If you would like further information about how we can help you, or if you have any questions, please don't hesitate to contact a member of our Family Law Team today.

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