Money Matters

What’s mine is yours?

Elizabeth Hoddler suggests that seeking the advice of a specialist solicitor is paramount when starting separation or divorce proceedings

How to protect your financial assets after separating from your spouse is a question solicitors are often asked, with concerns about splitting pensions and mortgages causing great stress. Divorce and separation is considered one of the most stressful life events, along with family bereavement and job loss. Worry and uncertainty that comes from separating all aspects of a life shared, emotionally, physically and financially can be assuaged by seeking expert advice from a solicitor, who specialises in this area of law.

Both parties will have questions, concerning their wishes to protect their hard-earned finances and investments, so naturally black and white answers will often be sought. It is important to note that a solicitor will have to advise on likely outcomes based upon the client’s case and a judge’s criteria therefore concrete answers may not be available, especially in an initial meeting.

Judging a case

The criteria a judge will apply to each case are set out in section 25 of the Matrimonial Causes Act 1973:

(a) The income, earning capacity, property and other financial resources which each party has or is likely to have in the foreseeable future including, in the case of earning capacity, any increase in that capacity which it would be, in the opinion of the court, reasonable to expect a person to take steps to acquire.

(b) The financial needs, obligations and responsibilities each party has or is likely to have in the foreseeable future including, in the case of earning capacity, any increase in that capacity which it would be, in the opinion of the court, reasonable to expect a person to take steps to acquire.

(c) The standard of living enjoyed by the family before the breakdown of the marriage.

(d) The ages of each party and the duration of the marriage.

(e) Any physical or mental disability.

(f) The contributions each party has made or is likely to make in the foreseeable future to the welfare of the family, including any contribution by looking after the home or caring for the family.

(g) The conduct of each party, if that conduct is such that it would in the opinion of the
(h) The value to each party of any benefit one party because of the divorce will lose the chance of acquiring (most usually pension provision).

Exchanging information

When seeking legal advice, both parties will be asked to provide the same financial information to their individual solicitors enabling a ‘level playing field’. Each solicitor will exchange information, and each side can then ask for further details to fill any gaps or to clarify issues that may have arisen.

To provide solicitors with an indication of how to split a family’s finances, clients will be asked to provide valuable financial information about them.

Solicitors will request:

• Details of earnings both past and present
• Values of pension/s
• Non-financial contributions to the family unit (such as looking after the children/home)
• Contributions to the family ‘pot’ of money which were not earned by either party (inheritances under a family member’s estate)
• Future expectations (pay increases/new jobs with fringe benefits such as company car or private healthcare).

On reviewing this information, a solicitor will take into account Section 25 criteria a) – h) for both parties and assess an equitable outcome for their own client.

A fair outcome

In order to achieve an overall fair outcome for both parties, a claim to assets may be required. Assessing how a court will divide up a family’s assets such as a dental practice or pension fund is not a precise science, as Judges ultimately only have discretion over the facts placed before them.

Only when all relevant case facts are known can a solicitor offer advice on the likely outcome based on the statutory checklist Section 25 and current law.

Meeting with a solicitor for an initial interview to discuss financial implications of divorce is the first step towards achieving a fair outcome. If both parties provide the solicitor with a frank and exhaustive account of their financial positions, it will enable the solicitor to be in the same position as the Judge who will judicially determine a case.

Tips for the initial meeting with your solicitor:

• Take three local estate agents/brokers marketing appraisals with you giving an idea of the value of your property and any other property such as your dental practice or laboratory
• Get a current transfer value for your pension/s
• Get surrender values for any endowment policies/bonds
• Take in your P60
• Make a summary (as far as you can) of your spouse’s assets
• Make a list of your debts and those of your spouse (if any)
• Get a statement showing the balance on your mortgage account/s.

This information will aid your solicitor in understanding where you stand financially, and enable them to provide you with initial advice on how the court may treat different assets within your case.

Seeking the advice of a specialist solicitor is paramount when starting separation or divorce proceedings and as such it is wise to be wary of well meaning friends and colleagues who have been through a separation. As the Section 25 checklist is applied to individual circumstances, the right outcome for them may not necessarily be the correct option for you.

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