Burley Financial Services

financial implications of divorce faq's

Gaining an Equitable Settlement

Whilst the divorce process itself is relatively straight forward, the ancillary relief process where you agree who gets what from the matrimonial estate can be long drawn out and complex.

As well as deciding who gets the sofa and the best china, you will have important decisions to make about how your investments, pensions and the equity in your home are to be shared. Since the case of White v White in 2000 the starting point for all divorce cases is that both parties gain an equal share of the overall matrimonial assets so simply put you should be able to add up the value of all your matrimonial assets and divide by two, but things are rarely that simple.

The starting point is to complete Form E, the Financial Statement needed for the divorce process. This form will identify all of your assets whether held in joint or single names as well as all your debts. This will help to establish the overall net value of your matrimonial estate.

In order to complete Form E as fully as possibly you will need to get up to date valuations of all your assets and liabilities, including a valuation of your home, your outstanding mortgage balance, valuations of any unit trusts, shares or other regulated investments and Cash Equivalent Transfer Values for each pension you or your spouse may have, whether you are currently paying into them or whether they have been left frozen with an old employer or pension provider.

You then need to agree which assets each party will receive trying to achieve the 50:50 balance, however some assets will be able to be used now whilst others such as pension schemes, may not be available for many years to come.

This can make the equalising of the asset share more difficult and gaining unbiased, independent financial advice on all the options available to you is key.

Your Questions Answered

I have been awarded a good monthly maintenance settlement but am worried about what should happen if the payments stop?

If your ex spouse stops making payments you will be able to go back to court to have the payments reinstated, however if your ex spouse dies then payments will cease and you will have no form of redress. That's why it's important that you protect any maintenance award by either continuing existing protection policies ensuring that the benefits are written in trust to you, or alternatively start new plans.

Our current mortgage is an interest only mortgage with an endowment, what should we do with our endowment policy?

Surrendering your endowment back to the life office is rarely the best solution and there are many alternatives which you could consider. Firstly one of you could continue the policy and have the policy assigned to them. This means that the valuable life cover included in the policy will continue on both of you, useful if you need to protect any maintenance payments, however the death benefits and savings will now belong to just one party and can be used as part of the repayment plan for any new mortgage they have. You may also be able to leave the policy 'paid up', this means that you no longer pay into the policy but the valuable life cover continues by the life office taking away some of the savings built up in the plan each month to pay for the cost of the life cover. Again this can be a useful solution if you need the life cover element of the policy to continue. Some policies also offer 'policy loans' which could enable one party to take over the policy but release some money from the savings element of the policy to pay a share to the other party, again allowing the policy to continue providing life cover on both parties and ongoing savings for the benefit of one spouse. Finally, if you have a traditional with profits plan you may be able to sell the policy on the 'second hand' endowment market which often offers far higher lump sum payments than the surrender value offered by the life office.

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My ex spouse has their own business and has offered me some of the shares as part of the financial settlement but I don't want to become a shareholder, are there any alternatives?

It can be difficult when there are family businesses involved in divorce as often there can seem no alternative than to remain in contact as a shareholder or partner of the business. A specialist accountant will be able to advise you on an accurate valuation for the business and you can then see if there are other matrimonial assets which you could receive instead of a share of the business, for example pension benefits can often have built up to be valuable assets too and you may find that you could receive a higher share of the pension assets instead of receiving a share of the business asset. Talk to your legal adviser and an independent financial adviser to see if this could be possible.

All of our investments were in quite high risk investment funds but now I feel I want something more secure without so much risk, what should I do?

It's important that you have your investments in policies and funds which match your own financial objectives and attitude to risk. You should have a meeting with an independent financial adviser who will be able to explain to you the current investments you have, their risk profile and whether there will be any penalties or tax implications by restructuring your portfolio. Your adviser will then be able to develop a new investment strategy which meets your needs and will review this each year with you to ensure that the investments continue to meet your changing requirements.

After paying my partner their share of the equity in our home, I'm worried a new lender won't offer me a large enough mortgage to enable me to buy a house big enough for myself and my children?

There are many ways of overcoming this problem, the first is to use a lender who will take into account not only your earnings but also any court agreed maintenance payments as this will help to increase the amount that they are willing to lend you. Another is to use a lender who will look at affordability rather than at strict multiples of income as again this may enable a higher than usual amount to be borrowed. If this still doesn't help then you may need to consider a guarantor mortgage where your ex spouse, or perhaps another family member if your ex spouse is unwilling or unable to be guarantor, helps you to gain a higher mortgage amount by guaranteeing to make the payments should you default. An independent mortgage adviser will be able to help.

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