The D Word and your finances

Priya Kotecha discusses common financial issues that crop up during divorce proceedings

I was going to open this article with that famous quotation from Zsa Zsa Gabor ('I'm a marvellous housekeeper; each time I get divorced, I keep the house') but it seemed to make light of what is probably one of the worst situations any one of us could ever find ourselves in.

It is a sad fact that approximately 42% of marriages end in divorce. Sadder still when there are children involved, but the truth is that there are still many misconceptions about what happens to your finances in divorce and seeing the hard-earned fruits of your labour being eroded by legal bills is also sad. I have attempted to put together some of the questions clients have asked me about divorce over the years to try and make things a little clearer.

'My husband is filing for a divorce but the family home is in my name, so he won't be able to get his hands on it, will he?'

When pooling assets and then deciding how to divide them, the family home would be included – irrespective of whether your husband's name is on the title deed.

'At least I have my pension.'

Actually, no. You would be forgiven for thinking that if a pension is in your name it would remain 100% yours, even if you divorce. In reality of course, what happens is that all assets (including pension funds) go into a pot for fair distribution.

There are three bog standard definitions that you may hear:

a. Pension offsetting – this is where the pension rights are traded against another asset – like the family home. A problem obviously arises when the pension is the largest single asset as the other assets aren't enough to balance it against (be careful – most of your pension is taxable).

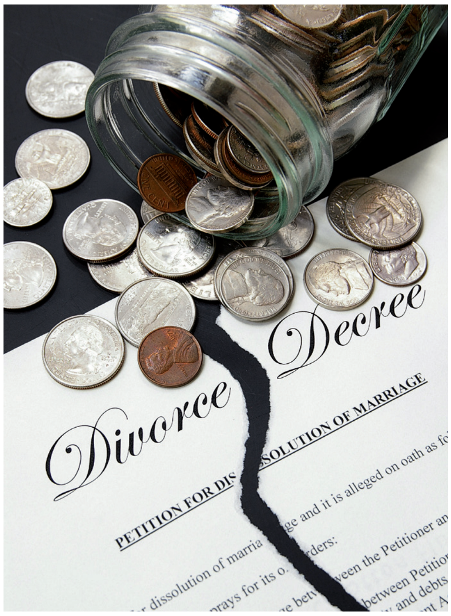
b. Pension earmarking – this is where the pension rights are effectively split, and does not allow for a clean break. Control remains with the plan-holder who could (if they were feeling particularly vindictive) delay retirement or act in a way that would inconvenience their ex. Also, the income that is paid to the ex is treated as though it was paid to the member – so higher rates of taxation may apply, without personal allowances. It is often best used in cases where a pension is already in payment.

c. Pension sharing – in this case the actual fund is split, allowing for a clean break. Both parties then have their own pension pots for the future. Under this option, all alternatives are available to each party independently, including the time when this is taken.

There are a number of issues surrounding pension valuation, so it is essential that you do consult a specialist who will be able to guide you through this difficult time and advise you of your options.

'We've finally decided to split and I have moved out and am back with my parents. She has agreed to pay the mortgage payments. As I no longer live there, if she skips payments that won't affect me will it?'

It may do. When you bought the house together and took out a joint mortgage that was not conditional on you actually living in the property. So, if your ex defaults, that is going to hurt both of your credit ratings and not just hers. It is worth contacting your bank for some initial breathing time, but in the long term, here are some of the things that may happen to your mortgage when you get divorced:



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a. A clean break – sell up, pay off the mortgage and divide the remaining funds between you and each of you can then buy your own places/rent.

b. She stays in the property and buys you out. The most problematic part of this may be getting the bank to transfer the mortgage to your ex's name as she will be assessed to ensure she can afford the mortgage on her own.

c. A guarantor mortgage which would require your ex to find somebody – most likely a parent or sibling – to guarantee she will be able to meet mortgage payments. Then, if she doesn't meet payments, the lender could start proceedings against the guarantor to recover the debt from them.

Generally what may happen in situations like this is that the wife and children would stay in the family home until the youngest child is 18 and then sell the property and divide the proceeds as per the terms of the financial agreement.

If anyone reading this is going through a divorce at the moment, be sure to take adequate legal advice and consider a pre-nuptial agreement should you get married again – they may not be legally binding, but it's a start.

Care to comment? @AesDenToday

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