



“Will I Keep My Pension?”

When I see a new client who has just separated from their spouse, this is one of many questions I am asked. Other common questions are (for example), “I paid all the deposit to buy our house, will I get that back?”, “my parents loaned us £10,000 to pay off our mortgage when we got married, will my spouse have to pay half of that back to them?”, “I was due to retire next year, but if my spouse takes half my pension how can I afford to pay my outgoings and still have enough to live on?”.

Divorce/separation is one of the most stressful events we can experience; it ranks amongst stressors such as the loss of one’s job, and even family bereavement. Much of the stress comes from uncertainty both parties face once they separate their lives physically, emotionally, and of course, financially. Both parties will have many questions, to which they quite naturally want black and white answers. At an initial interview with a Solicitor who specialises in this area of law, it is almost always impossible to provide concrete answers to all the client’s questions. This article will endeavour to explain why that is.

Solicitors advise on likely outcomes, based upon the facts of the client’s case, and the criteria which a Judge would apply to those facts. The criteria a Judge will apply are set out s 25 of the Matrimonial Causes Act 1973. They are:

(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 which each party has or is likely to have in the foreseeable future.

(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 which 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 Court be inequitable to disregard.

(h) The value to each party of any benefit which one party because of the divorce will lose the chance of acquiring (most usually pension provision).

A new client will be asked by their Solicitor to provide a great deal of financial information about themselves. Earnings (both past and present); non-financial contributions to the family unit (like looking after children/the home); the values of pension/s; contributions to the family ‘pot’ which were not earned by either party (inheritances under a family member’s estate e.g.); future expectations (pay increases/new jobs with fringe benefits like cars or private healthcare) – all of these can provide valuable information for the Solicitor to begin working out how the parties’ financial affairs can fairly be unravelled, and (if need be), how family assets should be re-assigned.

Both spouses will have to provide the same financial information, to their own Solicitors, so there is a level playing field. The Solicitors for each party exchange that information, and each side can then ask questions of the other, to clarify issues or fill any gaps in information. The Solicitors will then apply the s25 criteria a) – h) to both sides’ information, and try and work out a fair and equitable outcome for their own client.

Take for example a wife who gave up her career to raise children, and provide the husband the opportunity to work full-time and develop his career. When the wife’s role as mother and home-maker comes to an end (when the children leave school), her ability to earn a substantial income is greatly



diminished. The husband may by then be at the peak of his earning capacity. If the parties separate at this point, both parties’ earning capacity must be looked at, with a view to re-distributing income to compensate the wife for her role over many years as home-maker.

In another case, the husband may farm land which has been passed down through his family for generations. The husband has made a contribution to the family ‘pot’ (the family farm) which should not be overlooked. Would it be right for those farming assets to be put into the ‘pot’ and divided up equally between the parties? Is the farm a matrimonial asset, or should it be treated differently, given the parties to the marriage did not acquire that asset through their own joint efforts?

Working out how a Court might divide up family assets is not a precise science. Judges have discretion, and how one Judge might approach a given set of facts, can differ to how another Judge would do so. You can see from the examples above, that fairness or sharing of assets, may require that one party or another to give up assets, or a claim to assets, in order to achieve an overall fair outcome.

It is only when all the relevant facts about a case are known, that a Solicitor can (with any degree of certainty), advise clients properly

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“Will I Keep My Pension?” (continued from front)

on a likely outcome to their case, based on the current law and the statutory checklist.

If both parties give a full and frank account of their financial positions, the Solicitors will be in the same position of a Judge, who is asked to judicially determine a case. At an initial interview with a new client about whom the Solicitor knows very little, it is virtually impossible to answer the question “Will I keep my pension?” with accuracy therefore.

Be wary of genuinely well-meaning advice from friends or colleagues who have been through a separation/divorce themselves. Their financial and personal circumstances are unlikely to be exactly the same as yours. How the s25 checklist applied to them, was based on their individual

facts and figures, not yours. What is the right outcome for you, is not necessarily what was the right outcome for them.

An initial interview with a Solicitor about the financial implications of a separation/divorce, is the first step towards achieving the right outcome for your circumstances. There are no instant answers, or at least, none which should be relied upon.

Tips for the first meeting with your Solicitor

- Take 3 local estate agents’ marketing appraisals with you, giving an idea of the value of your home/any other property you own:
- 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 will help your Solicitor to give you basic initial advice on where you stand, and how a Court might treat the different assets in your case.

Elizabeth A Hodder
eah@gross.co.uk

Will It Be Found?



Are you sure that your family know the whereabouts of your Will? What happens if you move from the area?

A recent survey revealed that 67% of people in the UK did not know where to find their parents’ Wills. House moves, new relationships, new Wills and the passage of time all contribute to families not being able to find Wills when their loved ones pass on. This can create unnecessary stress at a time when emotions are already running high.

To be certain that your Will can be found on your death and to provide you with peace of mind, Gross and Co. are offering to

register Wills held by our clients on a National Will Register. The Register logs details of your Will, or an updated version of it, in a central place. By registering, your Will can be instantly found by an Executor or a beneficiary named in your Will, these being the only people who are entitled to search following your death. The content of your Will remains private between you and the Solicitor who assisted with the making of it, and there is no need to tell anyone that you have registered the Will on the National Will Register if you prefer not to.

What happens if I don’t register? Your beneficiaries may not receive the inheritance intended for them if your latest and most up to date Will is not found and Courts may distribute assets and decide who gets what, financially penalising your loved ones.

We are offering to register Wills free of charge to clients who made Wills with Gross and Co. before 2 April 2009. For those made after this date, there Will be small administrative charge of £20. If you wish to take advantage of this offer or if you have a concern that your Will is not up to date, please contact:

Gary De’Ath
gd@gross.co.uk or
Sarah Lee
sl@gross.co.uk

HIPs The Latest Update

An important change to the HIP regulations came into force on the 6th April 2009.

Since HIPs were first introduced it was always possible for an estate agent to start trying to find a buyer immediately as long as the process of compiling a HIP had begun. This was known as “first day marketing”.

From 6th April 2009 first day marketing is no longer possible. A property can now only be marketed for sale if a HIP has been prepared, including the following:

- Index
- Property Information Questionnaire (P.I.Q.)
- Energy Performance Certificate (“EPC”)
- Sale Statement
- Land Registry Title Documents or copy title deeds

The other required documents such as property searches must be added to the HIP as soon as available. The P.I.Q. is similar to the forms that are usually completed through your Solicitor once a buyer has been found. It has always been maintained by the Law Society that a HIP is a legal pack and should be completed with the assistance of your Solicitor who has specialist expertise. The new changes make doing so, even more important.

Estate agents cannot use information to start marketing a property by erecting sale boards, placing adverts in newspapers or placing the property on their website or other online portals which identify the property and its location, unless a HIP has been prepared.

We at Gross & Co feel that it is now even more vital that our clients have a properly prepared HIP in place at the earliest opportunity, so that their estate agent/s can begin to market the property without delay. Our clients should make us their first port of call. We will promptly arrange for the compulsory elements of the pack to be put in place immediately, so that your property can be marketed promptly.

Please contact:
Steven Quy or
Jo Sanger-Woodhouse
for details of how we can help.

Steven Quy
sq@gross.co.uk or

Jo Sanger-Woodhouse
jes@gross.co.uk



83/84 Guildhall Street
Bury St. Edmunds

Suffolk
IP33 1LN

Phone: (01284) 763333

Fax: (01284) 762207

www.gross.co.uk

**HOME
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