AstlePaterson

When trusted experience matters

A guide to protecting yourself from further claims when you divorce

Even if you reach an agreement with your ex-spouse as to how your assets are to be divided upon divorce, it is still important to incorporate the terms of the agreement into a Consent Order, even if you remain amicable with each other.

Sometimes, you may believe that neither of you will make any further claims against the other once matters are agreed. However, things can change. Therefore, obtaining a Consent Order is crucial in making sure that both parties are safe from future claims.

Sometimes, when couples apply for a divorce without legal advice, they do not realise that financial matters are dealt with separately by the courts, and any financial agreement reached between them is not fully legally binding, unless it is part of a court order.

What are Consent Orders?

Once financial matters are agreed between the parties, a document is prepared, known as a Consent Order. This document details how assets are to be divided between the parties.

For example, it may say that the family home is to be transferred from joint names into the other spouse's sole name and a lump sum is to be paid to the other, or alternatively, an order for sale of the family home together with instructions as to how the proceeds are to be divided. It may also record how any savings are to be shared, whether there are to be any pension sharing orders, or how any other assets are to be shared or retained by one, or the other, spouse. It may also include agreements about child support or spousal support.

Once a judge has approved the Consent Order, neither party can make any further claims upon the other. Without such an Order, either spouse could make a claim against the other in the future, even after their Final Order in the divorce proceedings.

What if there are no financial assets in the marriage? Does that mean a Consent Order is not required?

Even if you do not have any assets now, you should still enter into a clean-break Consent Order, as it could stop your ex-spouse from bringing a future claim against you. There are circumstances where your financial situation may change for the better, and your ex-spouse could still make a claim against you for a financial settlement. This could potentially happen years after the divorce, so it is important to still have a Consent Order, even if there are no assets.

What if I cannot reach an agreement with my future ex-spouse?

An application can be made to the court for a Financial Remedy Order, where a judge will decide how your assets should be divided. The court would expect you to attend mediation first in the hope an agreement is reached. Usually, there is less delay and less costs incurred if an agreement is reached without commencing contested Financial Remedy proceedings at court.

Are there any circumstances which would bar an ex-spouse from making an application for a Financial Remedy Order after they are divorced?

If a Financial Remedy Order has not been made during or after the divorce and the spouse re-marries, an ex-spouse is barred from making an application for a financial order regarding their previous marriage, save in relation to pensions. This means that at any time after the divorce, an ex-spouse – even if they have re-married – can still make a claim on your pension.

It is very important that a Consent Order is entered into once you commence the divorce process, so such claims are dismissed.

*Please contact Jane Flemming in our family department on **01283 531 366**, who can advise you further in relation to divorce matters discussed above or any other family matter.*

01283 531366
www.astlepaterson.co.uk

Clay House, 5 Horninglow Street
Burton upon Trent
Staffordshire, DE14 1NG