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Pensions and Divorce

Pensions are very often one of the largest assets of a marriage or civil partnership. So it is only natural that when things go wrong and the partnership splits up any pensions are taken into account when considering the financial settlement.

What if I have no pension or my pension is much smaller than my partners?

It is quite usual for there to be an inequality in pension provision between husband and wife or civil partners. This is normally because one of the couple has stayed at home or reduced their working hours to look after the home and any children. Of course this is a major contribution to the family unit even though it doesn't bring any income or associated pension. Therefore if one partner has spent several years in this role any pension in their own name will probably have become seriously underprovided for. When the relationship breaks down then this is one of the things that needs to be sorted out.

Am I entitled to half of my partner's pension?

The courts have long had the power to take pensions into account when deciding upon any financial settlement to be reached on divorce. However, contrary to popular belief, there is no automatic entitlement to an equal share in a pension, i.e. half of everything.

So what am I entitled to?

When courts have to decide on the division of assets they do not take an automatic 50/50 view. They have to take account of all of the circumstances of the marriage and arrangements after the divorce. For instance, two major factors considered will be how the matrimonial home is to be dealt with and who will reside there and have full responsibility for any children. If the matrimonial home and the husband's pension were the only major assets, and it was decided

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that the home should be transferred to the wife, so she could remain there with the children, then it may be unfair to also divide up the husband's pension. The share in the matrimonial home could be 'offset' against the pension.

The above example is a very crude method of division and in recent years legislation has been passed which give the courts greater flexibility in dealing with pensions.

'Ear marking'

The Pensions Act 1995 gave the court the power to make an earmarking order. In its simplest form this is an order to the pension trustees to 'ear mark' a percentage (as decided by the court depending on all the circumstances of the divorce) of the pension fund for the other partner. When the pension becomes payable that percentage of any lump sum and the regular pension payments will be paid to the ex partner.

Whilst this provides some future resources for the under pensioned partner, the possible long time gap between the financial settlement and the payment of the pension can cause some problems:

- the order could be varied by the court at any time in the circumstances change.
- the order will be nullified if the recipient of the ear marking order remarries.
- pension income will cease on the death of the pension holder.

Pension sharing

Whenever it is fair in all the circumstances to do so, the courts will try to make a 'clean break' settlement, i.e. a once and for all arrangement. The Welfare Reform and Pensions Act 1999 provides them with further powers to help them achieve this where pensions are concerned with a pension sharing order. Basically this order instructs a pension provider to split a pension so that both partners have a separate pension. There are a few things to note:

- The pension is split on a given date. Any contributions made after this date to either of the, now, two pensions are for the benefit of the pension holder only. Therefore if the recipient wishes to increase the fund they will have to make their own future contributions. Equally the original pension holder is free to start rebuilding their pension provision as they wish.
- The court does not have to split the pension equally. It will set a percentage based on the circumstances of the divorce and taking into account the balancing of the other financial assets.

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- The recipient of the order can make their own pension arrangements with their share of the pension fund. Therefore they do not have to wait until their ex-partner takes their pension benefits to enjoy their own.
- The pension is entirely independent and is unaffected either by the death of the ex-partner or the recipient remarrying.

Getting help

The financial arrangements around a split relationship can be extremely complex, especially where pensions are involved. The simple examples given above do not really start to look at some of the hidden problems, for instance, who decides what the pension is worth before it is split? There are many ways of valuing a pension, all of them producing a different result. And there are added complications if there is a Civil Service pension involved, for members of the armed forces, for instance.

In this complex area you will need experts on your side that are well practiced at recognising and navigating around any potential obstacles. For specialist advice please contact Tony, Anne or Rachel or visit www.gardandco.com.

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