



Relationship breakdown In a Busted economy Summer 2009

There has not been such economic distress since the early 1990s, when there was last a general insecurity in employment and a poor property market. This current situation, however, looks to be harsher and deeper. Then, as now, stress caused by financial anxiety places added strain upon all relationships. Current anecdotal reports indicate that relationship counsellors have never been busier and now have significant waiting lists.

In every relationship breakdown there is, for all involved, a collapse of hopes and an increased fear of the emotional and financial cost which may result. For those embarking on a division of the assets and income this anxiety is heightened by the financial uncertainty.

For those already separated or divorced there may be maintenance payments which were set in better times and are now unsustainable because of loss of income from redundancy or reduced expectations. These circumstances could now trigger a claim for a variation of the amount paid each month.

If issues and dispute arise there remains a general initial intention to come to an amicable agreement. It should be noted that even in better financial times the vast majority of court proceedings were resolved by agreement before any final trial. There are also a significant number of disputes which settle before court proceedings started.

Financial buoyancy may have assisted a settlement in the past, however, the present financial concerns do mean a greater focus upon tighter margins. It is therefore easier for friction to escalate despite a strong awareness of legal costs. More than ever it is vital that all concerned obtain independent advice, which should be both sensitive to the finances and personalities as well as providing firm and clear advice and representation. The purpose is to assist fairness under these circumstances.

In many cases the value of assets will have changed dramatically over the last year or so, particularly in respect of property. For the majority of couples the main asset is the home. However, despite the fluctuation in the market it is either possible to agree a value from several market appraisals or to appoint a single expert who is instructed by both people, which can ensure independence. Also, and understandably, sometimes people's expectations do not reflect the depth of the downturn in the market.

An immediate sale may not be appropriate, especially when it is a family home. There is a need for flexibility and agreements can defer the sale with proper arrangements made for the interim period. It is anticipated within the legal profession that there will be an increase in the number of court orders, which provide for a transfer of the property from joint names into a sole name with triggers for sale upon specified future events, such as a child reaching 18 years old. The person whose name comes off the property would retain an interest, expressed as a percentage, and would be protected by a charge secured against the home. There are numerous variations in the detail and potential consequences but this kind of order can be very useful. The media commonly refer to them as "Mesher" or "Martin" orders.

Property is not the only capital asset affected by changes in the economy, as share portfolios and related investments like pensions have also depreciated. However, they clearly remain important particularly when previously relied upon as a source of income and the focus will increasingly be upon identifying the risk in each investment. The value of pensions and, in particular, the relative benefit to each person will continue to be critical.

The downturn in the economy has also placed a greater pressure on family owned companies and small businesses, which can be viewed as either a capital asset or an income stream ("the golden goose/cash cow") or even both. Apart from the firm's general prospects in the foreseeable future, which would affect both value and income, it is likely that the more immediate concerns will centre upon liquidity and cash flow. The more extreme circumstances of bankruptcy or the likelihood of it in the future is becoming more of a consideration. At the least there is now a greater awareness of the need for protection when drafting an order given the prospect of a review of any court order by a Trustee in Bankruptcy and the potential consequences.

As with property, the uncertainty upon pensions and businesses may increase the necessity of expert evidence to clarify issues and provide facts – whether for the purpose of negotiation or the court. Similarly, people’s expectations of how the other’s business is doing could cause an obstacle and expert opinion may reduce possible further frustration.

The manner in which the economic climate has or will affect peoples’ relationships and their financial wealth will vary greatly. The underlying concerns will remain the same even if the tighter margins demand increased focus and, at the same time, increase the friction. However, the legal environment has the necessary flexibility and resourcefulness to assist people to achieve a fair outcome under their circumstances in this difficult economy.

Matrimonial department, Child & Child

Telephone: 020 7235 8000 Email: info@childandchild.co.uk

This article first appeared in Child & Child’s Summer 2009 Newsletter. To subscribe to our Newsletter please visit the firm’s website www.childandchild.co.uk

Note:

This article is for general guidance only and specific legal advice should be obtained in each case.