



WAY Investment Services

Divorce: get ready to protect and divide family wealth

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The first working Monday in January has rather unfortunately been nicknamed “Divorce Day” due to the spike in enquiries often reported by solicitors at that time of year. In a dramatic illustration of the point, Jeff Bezos, founder of Amazon and reportedly the richest man in the world, announced on 9th January that he is to divorce his wife MacKenzie. This particular split could lead to her becoming the richest woman in the world, and at least a billionaire even if she receives just one per cent of his wealth. Clearly there is much work to be done and perhaps the legal bills will also set new records.

That January spike may ring all too familiar with advisers who need to be confident they are well placed to offer support and advice as estates are split, albeit in dealing with more modest sums than Mr and Mrs Bezos will be tackling.



Divorce can have wide-ranging detrimental effects, not least on family wealth. Of course, no-one wants to enter a marriage with a plan for divorce. But that doesn't mean sensible steps can't be taken in order to preserve family wealth over the long term – protecting against all sorts of unseen future events which may or may not include a divorce somewhere along the lines. Many parents with significant family wealth naturally want to help their children financially but may be concerned that if a marriage doesn't last their family wealth could be lost to their divorcing son or daughter-in-law, not to mention in legal fees. Firstly, wishes must be discussed and understood, and secondly, they must be documented. The Will is usually the first point of call, but a Trust with an accompanying Letter of Wishes also provides a strong foundation for the future protection of family wealth. In a recent case which reached the courts, a ruling went against Ankul Daga, who claimed he was entitled to a £1 million settlement from his ex-wife. She happened to be the daughter of one of India's richest men, so the sums at stake were considerable. But with the assets existing before the marriage, as well as being held in a trust set up by her father, his claim was refused. Instead the ruling was that the financial terms of the divorce were to be based solely on assets generated during the time of the marriage.

A common scenario for families, including those of both modest and considerable wealth, is for parents to be assisting their son or daughter with their first house purchase. A financial gift from parent to child may contribute towards or even form the entirety of the deposit.

An often-unvoiced fear, however, is that the relationship may not last, and on divorce up to half of the gift could disappear from the family, which of course could be many years later. To help avoid this scenario, it is possible to make a loan to the son or daughter through a discretionary reversionary interest trust, at the discretion of the trustees. Following a request from the beneficiary, the trustees would create a loan agreement and once signed would then loan the money. This remains a debt owed to the Trust, so should the marriage fail, the monies could be safeguarded, ensuring wealth remains within the family.

A word of caution on prenuptial agreements - although they may be written with sensible intentions, and there are cases where they have been recognised by the courts, they are not legally binding in the UK and may not provide robust enough protection for the future.

There are also some reports that those with a prenuptial agreement are actually more likely



to divorce than those without. They are generally more popular in the US and remain a choice for only a minority of people getting married in the UK. Advisers may wish to remind clients interested in prenuptial agreements to consider them only as a part of a wider planning strategy, with more robust legal structures in place to provide greater certainty. This month the

House of Commons are due to review a Bill targeting so-

called “predatory marriages”, so that it may not necessarily be the case that a new marriage automatically revokes a Will. But while such debate continues, clients should be urged to review their Wills and ensure they are robust and up-to-date – especially at the time of marriage or divorce.

It is also worth reiterating that once a divorce is finalised, an individual has lost the inter-spousal/civil partner Inheritance tax(IHT) free transfer of assets and transferability of the Nil Rate Band (NRB) & Residence Nil Rate Band (RNRB) (if applicable), thus under current legislation the maximum NRB and RNRB that could be used to offset against assets in the current tax year would be £450,000 (£325,000 NRB and £125,000 RNRB, if applicable), rising to £475,000 in the 2019/20 tax year and £500,000 in 2020/21, which could lead to some recently divorced people facing significant IHT liabilities on their estates (unless they remarry or conduct some IHT mitigation planning!).

Divorce is painful and there are no simple remedies for the pain. But advisers are in a position to listen, to support, to guide, and to offer much-needed assistance for the financial practicalities of splitting up.