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Free
Information
Guide

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Family Law



Financial pressures can have a devastating impact on relationships and can often be a cause of why some break down. In today's society it is not uncommon for people to amass debt. This free information guide gives some general advice on debt and bankruptcy issues and the effect of these on financial matters in a divorce or civil partnership dissolution.

Debt

When determining financial matters on divorce or the dissolution of a civil partnership, the court does not have the power to apportion debt between the parties. All the court can do is to award a person more or less capital to take the debt into account.

It is very important to ascertain who is liable for the debt and whether it is secured on a home.

If a debt is in a person's sole name they are responsible for its repayment. If the debt is joint names, it is important to establish from the loan agreement whether there is "joint and several liability". If so, each party will be liable for the whole debt and the creditor can sue either party or both of them for the repayment. If there is not joint and several liability, and the debt is joint, the creditor must sue all the parties.

Different rules can apply to utility bills and who is liable can depend on who is in occupation of the property. Please see our free information guide Divorce FAQs. For this reason it is often advisable to notify utility companies and such like if you move out of a home, particularly if the bill is in your name.

Reorganisation of the family finances is usually important following separation. It is far better to do this in consultation with a spouse or civil partner so that each party is clear as to what their financial responsibilities are until the family finances can be properly considered and a financial settlement reached.

If there is simply not enough money coming in to pay for debts it is important to prioritise which debts should be paid. If there is enough money but a spouse simply refuses to pay, consideration must be given to an application for interim maintenance if there are divorce or dissolution proceedings, or if not, a failure to maintain application.

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The Family Home and secured debts

Usually the family home is the most important asset. If the home is mortgaged or acts as security for a secured debt it is important that the mortgage installments and the repayments for the debt are met. If not, the property is at risk of being repossessed which can have disastrous consequences. For further information, please our free information guide Divorce FAQs.

Bankruptcy

If unsecured debts cannot be serviced then bankruptcy is a real possibility.

Bankruptcy involves the court making a bankruptcy order. An application for an order can be done by the individual filing for their own bankruptcy or by the party to whom the money is owed.

An individual must file a bankruptcy petition and a statement of affairs which sets out their financial position. The court will make that person bankrupt if the judge is satisfied that they are not able to pay their debts as and when they fall due.

If a creditor makes the application they must show that the person owes £750 or more, that they are unable to pay the debt or there is no reasonable prospect of them so doing. Usually this is shown by the creditor having served a demand for payment ("a statutory demand") 3 weeks previously, which remains unpaid.

Effect of a Bankruptcy Order

Bankrupts are subject to a number of disqualifications. They cannot act as a Company Director and certain professionals are prevented from practicing in their professions. They cannot seek credit of £250 or more without disclosing that they are bankrupt. Their future credit rating will also be affected, long after the bankruptcy is discharged.

A bankrupt is unable to deal with property and an Official Receiver is appointed to be the manager of the bankrupt's finances. Where there are sufficient assets a Trustee will be appointed and everything that the bankrupt owns becomes in effect the property of the Trustee.

There are certain things that the Bankrupt can retain such as the tools of a trade, clothing, bedding, furniture and certain pensions. The Bankrupt will also be able to keep their income but the Trustee can apply for some of this income if it is relatively high.

The Bankrupt has an obligation to co operate with the Trustee whose function it is to collect and sell assets. They will then pay creditors a proportion of their debt according to what is available.

Bankruptcy and the Family Home

The ownership of the family home is important when it comes to bankruptcy to determine what will pass to the Trustee.

If a property is jointly owned only the Bankrupt's share will pass to the Trustee who can then force a sale of the property. If an application for sale is made a year after the Bankruptcy Order, it is likely to succeed unless exceptional circumstances exist.

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Discharge of Bankruptcy

This will occur after one year but it can be sooner if the Trustee so desires or longer if the Trustee applies to extend the bankruptcy. On discharge the Bankrupt will be released from all their liabilities except those to pay damages for personal injury, under an order made in Family proceedings or by virtue of a Child Support Agency maintenance calculation.

Any property or assets do not revert back to the Bankrupt except for a sole or principal residence which will re-vest after 3 years of the Bankruptcy Order unless the Trustee has taken steps to enforce their interest.

Bankruptcy and Divorce/Civil Partnership Dissolution Proceedings

If there is not an enforceable financial order in place the effects of bankruptcy can be catastrophic. Although it is possible to apply to annul a person's bankruptcy this can be very difficult. Quite often there may be no other option but for financial claims to be dismissed or left in abeyance and revisited later but much will depend on the particular circumstances.

People are in a much stronger position if a financial order has been made and has come into effect by virtue of the Final Decree of Divorce or Final Order.

My partner is at risk of bankruptcy, what should I do now?

If there is a possibility that your spouse or civil partner will become bankrupt it is important to act immediately. Generally it is far better to secure a financial order from the court and ensure that it is implemented before bankruptcy occurs.

Specialist advice is essential even if you have agreed a financial settlement with your spouse as applications can be made by the Trustee to set aside orders.

Fisher Meredith's Family Law Department has specialist solicitors who offer in depth experience in dealing with financial issues on divorce, dissolution of a civil partnership or when a relationship breaks down. Our team is able to assist and advise on all bankruptcy related issues.

Useful links

Consumer Credit Counselling Service
<http://www.cccs.co.uk/>

Citizen's Advice Bureau
<http://www.citizensadvice.org.uk/>