Include financial plan in separation agreement

MERRICK

By PETER MERRICK

Currently, as a result of *Miglin v. Miglin* and *Plaxton v. Bailey*, there is no guarantee that the lump-sum recipient spouse will not come back 20 or so years after a divorce settlement and request lifetime spousal support payments.

One way family law lawyers with payer clients are "covering" themselves is to include a clause in the separation agreement stating that the recipient spouse, if she or he wishes to revisit the issue of spousal support, must pay x dollars up front, which would be a reasonable estimate of the payer spouse's costs to defend the action. This, however, is only a Band-Aid measure.

Another safeguard to prevent the revisiting of the lump-sum spousal settlement is the inclusion of a financial plan as an addendum to any separation agreement.

Such a financial plan would detail the recipient spouse's financial future. The plan would give the spouse a blueprint for distributing the settlement monies. This would be a strong defense to any action taken by a recipient spouse, and it would provide peace of mind for the payer.

Associated with this major life transition comes the inevitable dismantling of the financial commingling of family assets accumulated over the lifetime of the marriage.

This is a particularly overwhelming and stressful undertaking for a spouse who has had very little involvement in the couple's money management and financial planning.

One's ability to find his or her bearings during this period is further complicated by the likelihood of emotional trauma clouding a person's better judgment at a time when sound decisions are of the uppermost importance.

Financial impact

A financial plan helps both parties determine the short-term and long-term financial impact of any proposed divorce settlement.

These plans provide valuable information on financial issues that are related to divorce, such as the family investment portfolios, RRSPs, dividing pension assets, tax consequences, continued healthcare coverage, RESPs, children's education and weddings, and a whole host of other financial considerations.

Financial planning during divorce should reflect an individual's dreams, hopes and aspirations in addition to meeting day-to-day obligations. It should begin with a personal goal-setting exercise that reflects how the client wants to spend the rest of his or her life.

The issue is not just, "Can I afford it," it's also "How do I want to spend the time I have left?"

Individuals experiencing marital breakdown must go through a process of self-review to create a new life after marriage. This includes the understanding and ability to emotionally deal with the misconceptions about aging and retirement, attitudes and self motivation, the transition from married life to single life, housing choices, and changes to personal relationships.

The topic of aging is one that many prefer to avoid. Yet, it is a process all of us must go through. We can prepare for aging only if we talk about it and plan for it.

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While it may be difficult for some people to picture a situation 10, 20, 30 or even 40 years in the future, it is an essential discussion to ensure that the personal financial planning for the lump-sum settlement will address these potential needs.

Examples of potential needs include possible long-term health care needs; living accommodations when one can no longer care for one's self on a day-to-day basis; or personal and financial powers of attorney and Wills.

While aging may be an uncomfortable subject for individuals, the financial plan needs to break down these barriers to ensure that individuals have plans that anticipate real potential scenarios.

What may be missing in most divorce processes is financial expertise. In most cases a qualified Certified Financial Planner (CFP) is needed. CFPs, through training, experience and a strict adherence to a code of ethics are able to estimate the long-term impact of these settlements. A CFP can help clients make financial sense of these proposals.

The financial ramifications of a divorce can be devastating. But with proper planning and expert help from professionals specializing in financial planning and just divorce settlements, clients can increase their chances of arriving at a settlement that fully addresses their long-term financial needs, and those of their spouses.

And, of course, a financial plan is also a tool to help prevent lump-sum-recipient spouses from coming back in the future to request lifetime spousal support payments.

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CAs enjoy positive image

The BOTTOM LINE

What are federal decision-makers saying about Canada's chartered accountants? Mostly good things, according to a recent survey.

In late 2005, SES Research, an independent polling firm, surveyed a total of 100 government stakeholders, including MPs, senators, senior departmental officials and ministerial staff. Overall, the majority of respondents had a very positive impression of the profession, indicating that CAs are held in high regard among almost all government stakeholders.

"Canada's chartered accountants are seen as industry leaders who are trusted, experienced and professional," the survey findings state.

Here are some of its other key findings:

Respondents viewed the CICA as a strong and experienced voice for its members, who continue to maintain a solid reputation among most stakeholders in the federal government.

Decision makers in Ottawa described CAs as, "professional, respectable and competent".

Of the core CICA government relations programs, respondents were very aware of the Federal Budget Day Commentary and submissions to the House of Commons Standing Committee on Finance.

Respondents said the following about the Budget Day commentary: "Provides commentary that gives the straight goods and lacks spin." The-budget submission was described as providing "useful information... It's clear and concise."

Industry's ethics improving

The BOTTOM LINE

A recent study published in the April issue of the *Journal of Small Business Management* has found that the business world is not going the way of Enron, Arthur Andersen, or WorldCom.

Instead, the research shows that over the past 17 years the ethics of business leaders and professionals are improving. In recent years business owners and managers have been and continue to make more ethical decisions.

The study was based on responses from more than 5,000 managers of both small and large firms in the United States, with representation from all 50 states. Over a time period stretching three decades, the authors mailed surveys to respondents in 1985, 1993, and 2001 asking them to judge the degree to which they found 16 scenarios compatible to their own ethical views.

The business situations ranged from the illegal to the debatable. With the exception of the 1993 survey, in which small business respondents showed a propensity to be less ethical, there was no difference between large and small firms. Both showed increasingly positive selections.

Government accountable to public

Continued from page 1

vehicle parts and kept the money. Almost half of the 42 incidents were theft and the remainder were split between fraud and financial irregularities.

Finance minister Andrew Thomson told the media that the government "is firmly committed to being accountable to the public when major incidents are found. Since major cases were discovered in 2004-05, the affected departments and executive government have taken a number of specific measures in response to reviews of these specific cases.

"These enhancements will build on an already strong government-wide financial management system," he said.

The new initiatives include:
- improved training programs for managers and administrators;
- enhanced internal audit functions;
- regular reporting of all incidents involving over $500 by the provincial comptroller to the public accounts committee; and
- partnerships with public accounting firms where an external opinion or review may be of benefit.

Thomson said transparency and financial accountability are important to the NDP government and the Crown Investments Corporation will establish a comparable policy of reporting to the chair of the legislative standing committee on Crown and central agencies. CIC will also strengthen the internal audit function for the Crown sector.

WENDEL

"Saskatchewan Finance, through the office of the comptroller, will continue to work closely with government departments and agencies to minimize risks and strengthen accountability," Thomson said.

Wendel told *The Bottom Line* his office had reported on most of these incidents.

"Some we had reported on in our reports, some we hadn't. The larger ones have all have been reported on." His office would have reported if there were recommendations for improvements to a systemic problem, he said, but most of the incidents were not cause for concern.

"Most of them they found by themselves, in the departments. Their system was working and they discovered the issue and took the action they were supposed to take when it happens, and there's really nothing more to do with it," said Wendel.

"Some of them are just part of doing business. If you're in the cash business selling merchandise and you hire people to run your tills, you have controls to find people that are stealing from you and you do what you have to do at that point—no different than any other business really. If you ran a business somewhere, it's just one of those things that happens," said Wendel.

Most of the employees involved in the 42 incidents were either dismissed or disciplined.

Wendel said the government seems to have brought out these incidents now "to make sure every one of these is made public and try to create a different kind of culture that brought awareness that we're going to talk about these things and people are going to be disciplined over them. From that standpoint, it's probably a