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For Life

PENSION PLANNING AND TRUSTS

Dividing up pensions

The benefits of paying into a pension scheme are well known but what happens to those savings should a couple divorce?

Imagine the situation where a couple have been married for 30 years and have made the difficult decision to divorce. Throughout the marriage the husband worked full time and contributed to a private pension, which the couple intended would provide for them both on retirement. The wife contributed equally to the marriage by looking after their children over the years and working part time, but she does not have a separate pension in her own name.

On divorce, the separating couple will have claims against the other for income, capital and, importantly, pensions. The court has the ability to make orders relating to the parties' pension provision, one of the most common of which is a "pension sharing order".

Pension sharing orders divide rights under an individual's pension scheme. The court can effectively create provision for each spouse from a pension scheme, so that they each have their own distinct right or share in it.

When considering pensions the court will exercise discretion, taking into account various factors, such as the length of the marriage and the age and financial needs of the couple divorcing. The court's outlook when considering finances in a matrimonial context is one of fairness, with the objective of trying to ensure both parties' financial needs are met. In a long marriage where the couple is nearing the age of retirement, the court may take the view that each party should have 50% of the pension in order to meet their needs. Of course, the exact percentage share is fact specific and would be decided on a case by case basis, but the general approach of the court remains the same.

The intention of pension sharing orders is to ensure that on separation neither spouse should be left without adequate provision later in life, and it can protect the parties with that purpose in mind.

Ella Johnson
01206 217363
ella.johnson@birkettlong.co.uk

Everything you ever wanted to know...

...about a trust

Lawyers often talk about 'trusts' but there is generally a lack of understanding about what trusts are, how they are used and how they can be of benefit when you are planning for the future. This article provides some insight.

What is a trust and who runs it?
A trust is where one person holds money or assets on behalf of, and for the benefit of, another person. A "trustee" is the person who controls and looks after the money and/or assets.

What types of trust are there?
We will be running a series of articles about the trusts mentioned below. However, if you need to know more before the next article, give us a call!

- Discretionary trust – This trust lists various people that can potentially benefit from the trust and the trustees decide from the list who gets what and when. These are often used for inheritance tax planning or protecting assets.

- Life interest trust – This gives someone a limited interest in a particular asset. The person benefiting from the trust will be entitled to use the asset or receive the income generated by the trust until such time as they die, remarry or cohabit. These are often used in second marriage situations.

- Vulnerable persons trust – A special trust that is created for someone that is in receipt of means tested benefits.

- Will trust – A simple trust in a will where you specify an age at which the beneficiaries become entitled to the funds – for example at age 18, 21 or 25.

- Bare trust – Explained in detail below.

Something to "bare" in mind
For many, the mention of the word "trust" brings to mind a picture of long winded legal documents, full of incomprehensible jargon. There is also the assumption that once money or assets are in a trust, no one can get at them without a great deal of effort and only after a long wait.

The good news is that this is not the case!

Trusts are actually very simple structures that only become complicated in unusual circumstances. The most simple of all is a "bare trust". For example, if a grandfather

Pensions update

Changes to death benefits

There have been many changes to pensions recently, one of which is that policyholders are now allowed to pass on their pension savings to a nominated beneficiary, potentially without having to pay a tax bill. It is thought this relaxation of the rules will result in a large number of beneficiaries paying significantly less tax, if any, when inheriting pensions.

Following the rule changes on 6 April 2015, a pension can be inherited tax free if death occurs before age 75, so long as it is paid out within two years of the date of death, even if the deceased has taken an income and/or lump sums from their pension pot, and regardless of whether or not the beneficiary decides to take the pension as a lump sum or as an income. The beneficiary will pay tax at their marginal rate, but this is likely to be less than the previous tax charge of 55%. This includes annuities purchased since the date of the rule change.

To ensure that your pension is paid to the person(s) you wish, a 'death benefit nomination' form or an 'expression of wish' form should be completed and registered with your pension provider(s). In some instances a trust document is used instead.

If you have already made plans for your pension on your death it is worthwhile reviewing those arrangements to ensure wishes to put money aside for his granddaughter, all he has to do is open an account or make an investment in his own name, and designate it as being for her. By doing this, the grandfather becomes a "bare trustee" and the money is no longer his to use as he is only looking after it.

This is an extremely convenient way of dealing with smaller gifts – a grandfather with three grandchildren could "give" each of them £1,000 each year, which would be within his annual allowance, without actually handing the money over. However, it must be remembered that the money legally belongs to the grandchild, and upon her 18th birthday she is entitled to it unconditionally. Whether she actually gets it then will depend on how good she is at winding grandpa round her little finger, but if he declines to hand it over she has the right to sue for it!

We can help with making a trust and our independent financial advice team can advise on the most appropriate type of investment – providing you with joined up thinking and advice.

David Feakins
01245 453870
david.feakins@birkettlong.co.uk

that they remain tax efficient in light of the changes that have now come into effect. For example, if you are over 75 and your nominated beneficiary is likely to pay higher rate income tax when they inherit, you could, for example, change your nomination to grandchildren, who may be on a lower or nil rate of income tax and would therefore have a lower tax liability.

Whilst the importance of completing a death benefit nomination form cannot be overstated, it should be noted that although your pension provider will consider your nomination (and usually pay to your nominated beneficiary) they are not obliged to follow your wishes and can pay the benefit to someone else if they deem it to be more appropriate - for example if they consider that another person was dependent on your income. Therefore it is important to have a valid will in place, and to review that will regularly, as it may also be taken into account.

We work closely with our colleagues in the wills trust and probate team, who can help with making or reviewing your will.

Kate Barnett
01206 217356
kate.barnett@birkettlong.co.uk

property advice

Buy to let...still a good idea?

Despite the rise in stamp duty land tax in April, buy to let properties are still seen as a good investment opportunity, especially in light of the historic low rates of interest and volatility in the stock market. If you're considering entering the market, these are some factors you might want to consider:

Do your research!
Before you start looking at properties, make sure you know what you're getting into and consider all the risks involved. Property is a long term investment, so you need to consider whether you can afford to have money tied up for this long. If you are likely to need quick access to your money, then property probably isn't the right investment for you. You also need to think about what happens if house prices fall and whether you'll still be able to afford the property.

Choose the right area
When researching areas, it's essential that you think about who your potential tenants are and where they want to live. This isn't going to be your family home, so forget about your own preferences. Look at the transport links, schools, universities and amenities, and how these factor into the lives of your prospective tenants.

Check the finances
Before you commit to an investment, you need to ensure that it's affordable. Look at the price of local properties and the possible rental income to see if the figures add up. Usually mortgage deals for new property investors will require larger deposits (often around 25% to get the best deals) and arrangement fees can cost more.

Research mortgage deals
Make sure you look at all the mortgage products available – don't just opt for the first one you find. It's also worth considering using a specialist financial adviser who can look across the whole market and might have access to exclusive products.

Know your tenants
You always need to keep your potential tenants at the forefront of your mind to ensure that it's a property they will want to live in. For example, families will be looking for something very different from students or single people. Deciding on your target market will help you to focus on exactly what type of property you're looking for.

Consider the negatives
When you're entering the property investment market, don't just think about the positives. Consider the negative aspects, including whether your investment will still work if prices fall – or demand drops. You need to think about what will happen if the property is empty for long periods or the property needs essential repairs.

How involved will you be?
Will you want an agent to manage the property or will you deal with everything yourself? An agent will charge a management fee but they'll take care of advertising, viewing and organising repairs. They will also be dealing with tenants for you – which can be a big plus. If you decide to go with an agent, research all the options and the different fees.

Birkett Long offers a full range of legal advice regarding property and conveyancing services. Contact Kurt for more information.

Kurt Goddard
01206 217391
kurt.goddard@birkettlong.co.uk

BIRKETT LONG LLP

PHOENIX HOUSE
CHRISTOPHER MARTIN ROAD
BASILDON SS14 3EZ
T 01268 244144

ESSEX HOUSE, 42 CROUCH STREET
COLCHESTER CO3 3HH
T 01206 217300

FAVIELL HOUSE, 1 COVAL WELLS
CHELMSFORD CM1 1WZ
T 01245 453800

E NEWS@BIRKETTLONG.CO.UK
WWW.BIRKETTLONG.CO.UK
TWITTER: @BIRKETTLONG