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Ease the pain - and the cost - of getting a divorce;

By Rosie Murray-West

Focus: divorce. The depressed economy is making it harder to divorce -property used to be people's most significant asset, but falling house prices have eaten away at the equity, forcing couples to look at other assets to split. This can be complicated, so a prenuptial agreement could help. Or you can now go one step further with divorce insurance, which can protect you against spiralling legal costs

Breaking up is hard to do - and in many cases it can be extremely costly. This week sees the launch of the widest-ranging divorce insurance product yet on the market, as customers count the cost of marital failure.

The product, from Prolegal and Arag, is designed to be taken out at the same time as a prenuptial agreement and will then pay for any subsequent litigation. It illustrates just how expensive divorce has become, with many people putting off the final clean break because they simply cannot afford the negotiations.

Unromantic as it sounds, more and more experts are suggesting that couples think about the possibility of marriage breakdown before they even put a ring on each other's fingers. Prenuptial agreements are not currently legally binding, and are instead looked at on a case-to-case basis, but this is likely to change in the near future. Postnuptial agreements, made after the marriage, are already binding.

"Just because you insure against something doesn't mean you want it to happen," said Jonathan West from Prolegal.

He said the divorce insurance product he is helping to launch might be distasteful for some people but that it did fill a hole, especially given the end of legal aid for divorce cases. "You insure your car - but that doesn't mean you want to get into a car crash."

The recession has had huge implications for divorcing couples, particularly because of the sliding price of property. Fiona Sharp, a financial adviser from **Almary Green** who specialises in divorce and finances, said it used to be easier to divide assets because of substantial equity in property, but since this has waned in recent years it has become more complicated, with the spotlight on lots of other assets as well.

Mr West said many people had been entirely put off divorcing because of complication and costs. "It's not that their relationship suddenly improves," he said. "They just can't afford to do it."

Divorce insurance is just one way to ensure you can afford a clean break. The new Prolegal/Arag product will cover the costs of challenging a prenuptial agreement, or adopting it into a consent order where the parties are prepared to abide by its terms, but also the costs of subsequent divorce litigation itself. However, a decent prenuptial agreement may be a good place to start in some cases.

A recent case in Britain between the heiress Katrin Radmacher and Nicolas Granatino, a banker, has meant that these agreements hold far more weight than they did. Mr West said he expected the agreements to become binding, as long as they were seen as fair, which makes them more useful to engaged couples.

Who should consider having a prenuptial agreement? If you have substantial wealth acquired before your marriage, have children from earlier marriages or if you expect to acquire any money or property by way of gifts or inheritance during your marriage, then these agreements could help preserve your assets. Prenups are most likely to be appropriate in situations where one partner is significantly wealthier than the other, or has assets that they want to ringfence against the risk of a breakdown in the relationship.

Bear in mind that each side must be given the opportunity to take proper and full legal advice before considering signing. If you think a prenup might be right for you, do not leave it to the last minute. A spouse who is

asked to sign a prenup just before the wedding may be able to argue later that it was unfair because of emotional duress. Courts are still likely to disregard contracts they regard as unfair to either signatory.

If things do go wrong and a marriage looks as if it is heading for divorce, it obviously makes sense to keep things as amicable as possible. Mr West pointed out that this was also likely to be the cheapest option for couples. "If you can agree a firm foundation before getting the lawyers involved, you can save a substantial sum," he said.

When dividing up the assets, it is important to assess correctly what you have and the impact on your life. Ms Sharp of **Almary Green** said the pension was one of the most commonly overlooked assets - even though it can often be worth more than a property. If one partner has a substantial pension and the other has nothing, it is possible to deal with this in three different ways.

The first is offsetting, which means you balance the value of the pension against another asset. "This is simple, but not always ideal," Ms Sharp said. "It is really important to think ahead and consider exactly what income both parties will have in retirement and how long they still have to save towards it."

She said too many women ended up keeping the house because they needed it for the children and disregarding the pension, even though they would need it later.

A second strategy, known as earmarking, means that a percentage of the member's pension is set aside for an ex-spouse on retirement. This isn't watertight, however, and if the ex-spouse remarries or dies, the benefits can be lost.

As a result, pension sharing is now more popular. This allows a percentage share to be transferred into a pension scheme in the ex-spouse's name. Sharing has become more common in recent years.

Ms Sharp also said it was worth considering the state pension, especially for women with a broken National Insurance record, who would get less in retirement.

Those in this situation can substitute their former partner's National Insurance record to get a better pension, while the second state pension (or Serps) can be split on divorce. You can get this valued by submitting a form BR20 to the Pensions Service.

If you are already drawing a pension when you get divorced, this can be shared too - but tax-free cash cannot be taken by the spouse in receipt of the pension share.

"It is really important to seek proper advice with regard to pensions on divorce," said Ms Sharp. "The value of some schemes can be significant."

Divorcees often fall foul of new tougher lending criteria when they try to get a new mortgage after the split. "If you have to remain on a mortgage to assist your exspouse, this will have an impact on what you can borrow elsewhere," warned Ms Sharp. "If you are paying maintenance, this will also qualify as a reduction against your income and borrowing capacity."

Once you are divorced, it can be helpful to take a look at your credit rating. While you are married, your credit record will record a "financial association" with your now ex-partner, so that any financial problems he or she has are seen by the ratings agency. You can apply for a dissociation, so that when the credit agencies see your file, they don't see the other person's debt.

Talk to the main credit reference agencies - Experian, Callcredit and Equifax - about this as soon as you can.

Separation without the desperation

Divorcing is never going to be a pleasant business, even with the proliferation of Happy Divorce cards you can now find in the shops. But you can make it less painful, and less expensive, if you go about things the right way.

Keep the lines of communication open

It might sound trite, but the cheapest and simplest way to sort out a divorce is to do it amicably. Jonathan West, head of family law at Prolegal, said clients could save thousands of pounds "by reaching a broad consensus before lawyers get involved".

Don't try to hide things

Divorce lawyers are trained to look for anomalies in bank account statements, so even if you think you have squirrelled away money that your spouse doesn't know about, they are likely to find it. Please bear this in mind.

Think about your pension

Financial adviser Fiona Sharp said couples often forgot about the value of pensions during divorce. However, pensions are significant assets, and the perils of ignoring them can be particularly acute for women, who typically have smaller pensions than their husband.

There are several options for those who are not yet retired, including offsetting the pension, earmarking it, or pension sharing. It is best to take financial advice.

Get your tax timing right

You can transfer assets between spouses without capital gains tax liabilities, but because this no longer applies after divorce, it is important to get your timing right when splitting assets.

"Divorce lawyers often don't understand how important this is, because it is purely a tax point," said Andy White, a tax adviser from accountancy firm CBW. "If you aren't confident that the lawyer understands correctly, you Shattered dreams: the financial side of divorce can be messy may want to get specialist tax advice."

Assess your risk appetite

Many people receive investments as part of a divorce settlement, including shares and unit trusts. While it can be tempting to just leave these as they are, it is important to examine what you have received.

Your former spouse may have a different attitude to risk, or your newly single status may affect how safe you need your investments to be. Make sure your portfolio matches your risk appetite.

Ensure you insure

If your spouse is paying maintenance, you may want to think about what would happen if he or she were to die or become ill. Some people consider taking out life insurance against this eventuality.

Your will

Make sure you make a new will after divorce, since your circumstances will have changed considerably.

Don't take your eye off the ball

When you are dealing with the big stuff, it is easy to forget the minutiae of everyday finances, especially if you are not the one used to doing the budgeting.

Make sure that direct debits get paid and cheques do not bounce while all of this is going on.

You don't want to be racking up bank charges on top of everything else.

Expert view

Alison Howes

The world of prenuptial agreements, or prenups, is changing. A short time ago they were regarded as the preserve of the super-rich or viewed as showing a lack of devotion to your spouse. But in recent years perceptions have changed both in the courts and in relationships, with many now seeing a prenup as a key tool in securing a fair separation.

Last year's landmark ruling by the Supreme Court on the dispute between Katrin Radmacher and her ex-husband Nicolas Granatino was a major leap towards making prenups legally binding in England and Wales. While the case is exceptional in terms of the money involved (Ms Radmacher had an estimated fortune of £100m), the principles are likely to be embraced in all kinds of divorce settlements in the future.

The judgment means the court will consider the prenup binding unless it would be unfair to hold the couple to its terms.

Outside the courts, a change in the outlook on prenups has been seen both in couples preparing for marriage and in those who have already tied the knot.

The current economic climate means uncertainty for couples and families. Many have seen the value of their main asset - the family home - fall significantly and it has become more difficult to make cash go around when a relationship breaks down.

For many, a divorce means a significant fall in standards of living, while others are faced with delaying retirement or entering the workplace for the first time in decades to fund their new lives.

Many couples facing divorce would now admit that a prenup would have made decisions much easier, but such an agreement tends to be the furthest thing from people's minds when they embark on marriage. Giving some thought to what would happen if a relationship broke down, however, could make a vital difference.

Those who prepare for the worst will be better served than those who fail to consider it until faced with the challenges of divorce.

Alison Hawes is a partner and family law expert at Irwin Mitchell

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"You insure your car - but that doesn't mean you want to get into a car crash

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DIVORCE HOW THE MODERN MARRIAGE BREAKS DOWN 20% of marriages in 1969 ended in divorce within 15 years 33% of marriages in 1994 ended in divorce within 15 years The divorce rate fell in 2009 to 10.5 divorcing people per thousand married population from 11.2 in 2008 Number of divorces by age at divorce England and Wales, 2009 Male | Female Thousands 20 15 10 5 Under 20-24 25-29 30-34 35-39 40-44 45-49 50-59 60 and over SOURCE OFFICE FOR NATIONAL STATISTICS