

Can you really have a clean break after divorce?

Many people mistakenly believe that a divorce severs your financial ties, but that is not the case. It is necessary to either agree your financial arrangements via a separate negotiation and have the settlement formalised by the court, or have the court decide how your finances should be divided.

Each couple's circumstances will be different and will determine the options available, with some people happy to maintain ongoing connections and other people keen to make a clean break.

'While an emotional clean break from your former spouse may be harder to achieve, it is possible to achieve a clean break in a legal and financial sense,' says Tony Roe family law expert at Dexter Montague in Reading.

A clean break order can be made by the court after divorce to ensure that you and your former spouse's financial ties are severed. It also means that neither of you can bring any financial claims against each other in the future.

Do I want a clean break?

When deciding if a financial clean break is something that you want, it is necessary to consider your individual circumstances.

The advantages to having a clean break, include:

- enabling a fresh start with certainty and control;
- avoiding the risk of having to give a share of future assets to your former spouse; and
- preventing time and costs in defending a future legal dispute over finances.

There are two main reasons why a clean break may not be desirable, namely:

- if you have a need for ongoing spousal maintenance and a lump sum buy-out is not possible (discussed further below); or
- if you have young children, as the uncertainty of the future may mean you feel it is wise to keep the 'spousal maintenance' option open. For example, if one of your children needed extra care and you were no longer able to work, you might need to obtain increased spousal maintenance at that time.

The risk of future claims

Without a clean break order, your former spouse can still make a financial claim against you even decades after you divorce. There have been many high-profile cases over the years that demonstrate this, such as:

- Dale Vince who built up a successful green energy business and 20 years after his divorce had to pay over £300,000 to his former spouse; or
- Nigel Page who, after winning the lottery, had to pay his former spouse £2 million.

Of course, while a clean break would have been advantageous to Dale and Nigel, the absence of one played into the hands of their former spouses.

However, if you want to ensure you have control of your own finances in the future and that your former spouse will not be able to share in your future earnings, inheritance, or windfalls then a clean break is advisable.

When a clean break is not possible

There are some circumstances when a clean break may not be possible immediately, the main reason being the need for ongoing financial maintenance.

Spousal maintenance is paid by one spouse to the other following divorce as an ongoing financial obligation. Whether you are entitled to it, and the amount you are entitled to, will depend on your circumstances and will take into account your needs and financial resources.

Spousal maintenance may be due if:

- there is a shortfall between your income and outgoings; or
- there is a significant disparity between your income and that of your spouse.

It is often due where one parent gave up a career to look after the children and became financially dependent on the other parent.

Spousal maintenance is normally paid monthly. The length of time over which it is required to be paid will vary and depends both on the length of marriage and the age of the parties.

Capitalising maintenance payments

If you are entitled to spousal maintenance, or are due to pay it, but would rather have a clean break now, then it may be possible to capitalise the maintenance into a lump sum payment. This means agreeing a figure that would effectively 'buy out' the

ongoing obligation to pay monthly maintenance. This can be an attractive option for the receiving spouse if they require a lump sum now, say for the deposit on a new home, or, if they do not want to continually have to rely on their former spouse to pay up each month. It can also be attractive to the paying spouse as they get to sever all ties now, meaning any future pay rises will not be taken into account.

Deferring a clean break

Sometimes ongoing spousal maintenance is a necessity, for example if the paying spouse does not have the capital available to buy out the receiving spouse's maintenance, or if the receiving spouse needs regular monthly income to assist with their budgeting.

If it is decided that ongoing spousal maintenance will be paid, then a delayed or deferred clean break will be possible when that maintenance ends. For example, spousal maintenance may be agreed to be paid for a three-year period. It can be agreed that at the end of that three-year period a clean break order will be made.

Conclusion

It is important to note that spousal maintenance is entirely separate from child maintenance and a clean break can be achieved even if there is an ongoing obligation for one spouse to pay child maintenance.

In the vast majority of circumstances, even if you have few assets at present, obtaining a clean break agreement is the sensible course of action.

A clean break in financial arrangements will often be the best option for divorcing couples. Where spousal maintenance is a factor then your individual circumstances need to be considered in deciding if a clean break is the best option now.

Our key contacts at DMP for further advice and assistance on clean breaks and spousal periodical payments (spousal maintenance) are Stephanie Alderwick and Tony Roe:

stephanie.alderwick@dextermontague.co.uk

tony.roe@dextermontague.co.uk

Telephone 0118 939399.

The contents of this article are for the purposes of general awareness only. They do not purport to constitute legal or professional advice. The law may have changed since this article was

published. Readers should not act on the basis of the information included and should take appropriate professional advice upon their own particular circumstances.