

Inheritance funds in divorce

Leaving a legacy to adult children – what if they divorce?

A recent poll by Opinium Research found that 32% of parents are worried about leaving an inheritance to their adult children, because they fear it falling into the hands of their son or daughter-in-law in the event of a divorce.

Inherited assets attract a great deal of emotional weight in divorce cases : the asset or money arrives as a result of bereavement, often of a close loved one. It has not been “earned” by the couple. However, all assets, regardless of their source, go into the kitty for consideration when a couple split up under current guidelines.

Many people in this situation have argued to the courts that their inheritance should be ring-fenced and kept out of the overall kitty, on the basis that it is not “matrimonial” money – instead, it is a contribution that one spouse has brought into the equation, unmatched by the other spouse

In big money cases, where there are sufficient surplus funds to allow some money to be ring-fenced in this way, a husband or wife might be allowed to retain their inheritance or a part of it, but for most couples, the reality of their financial needs going forward after divorce mean that every penny counts – including inheritances. Plus, once you start down the slippery slope of analysing the finances in terms of “contributions”, how do you then decide on the value attached to the various contributions each party will have made during a marriage? Is giving up a paid job to look after children worth more or less than the other spouse’s earning capacity? Is receiving an inheritance more important than having saved into a generous pension scheme throughout the marriage?

One obvious way to avoid these muddy waters is to consider a Pre-Nuptial agreement: these now carry much more weight than previously, thanks to a case called *Radmacher v Granatino*. Ms Radmacher came from a wealthy German family : her father threatened to disinherit her if she did not enter into a Pre-Nuptial Agreement before marriage. Their Agreement restricted her husband’s claims on her family wealth, her “inheritance”, and although he challenged the terms on divorce, he lost. The courts in the UK will now have to give Pre-Nuptial Agreements much more consideration ; they are likely to be binding unless there is some exceptional reason to undo them.

Post-Nuptial Settlements are also perfectly legitimate and binding : if an inheritance is pending or envisaged, a written agreement after marriage that the money/property will be retained solely by the beneficiary and will not fall into the matrimonial kitty could be considered. Quite how much good that would do to the marriage is another matter! As with all discussions about money in relationships, the subject needs to be approached with sensitivity and care.