

DIVORCE

Q MY WIFE AND I ARE SEPARATING AFTER 35 YEARS OF MARRIAGE. OUR THREE CHILDREN ARE ALL IN THEIR 30S, WORKING AND WITH FAMILIES STARTED. I AM NOT SURE WHAT WILL HAPPEN WITH OUR HOME, OUR SAVINGS AND DEBTS. WE ARE BOTH RECEIVING PENSIONS – MINE IS ABOUT \$105,000 AND HERS IS ABOUT \$35,000. I HAVE A NEW WOMAN IN MY LIFE, AND SHE MAY BE MOVING IN. I GUESS MARRIAGE IS ALSO A POSSIBILITY. MY WIFE, AS YOU CAN IMAGINE, IS PRETTY UPSET WITH THE SITUATION. WHERE DO WE EVEN BEGIN?

A I HOPE THAT BOTH YOU

and your wife know that you are not alone in your decision to separate. Thousands of Canadian empty nesters find their marriages no longer provide “enough” and strike out on their own or into new relationships. The following advice only applies if both sides are willing to co-operate. However, an angry legal battle is always a possibility – especially in this case, as I can understand why your wife is upset and hurt; you are making moves that will turn her world upside down. Separating at this stage in life can be a little like walking across hot coals. My advice to both parties is not to linger on the coals – make a plan, commit to it and just start walking. Fighting is expensive and you don’t want to burn your money away along with your feet.

Here’s a list of items that will need to be addressed.

PROPERTY The value of all your property will be included for division. Property includes everything – your home, its contents, vehicles, the cottage, RRSPs, savings, stock portfolios, your sports memorabilia collection and even your air miles. The value of all of these assets as of the date of

separation will be totalled. From that will be deducted all of the liabilities that you may have related to those assets, including your line of credit, any mortgage, unpaid taxes, credit card debt and family loans. The net amount left over is then divided evenly between the two of you.

SPOUSAL SUPPORT You must be aware that spousal support will be an issue. Since your pension is three times that of your wife’s, you should expect to pay her monthly spousal support on an indefinite basis. Check out the new Spousal Support Advisory Guidelines being used by the courts these days to calculate the required amount of sup-

port and its length (www.justice.gc.ca). If your pension income is \$105,000 and hers is \$35,000, the Spousal Support Advisory Guidelines would recommend that you pay spousal support in the range of \$2,100 to \$2,800 a month indefinitely. You will both need to budget for your new separate lives.

INSURANCE You didn’t mention life insurance but you will need to designate her as the irrevocable beneficiary for as long as you are paying her spousal support. That will protect your estate plan. Support orders are binding on estates. If you died without insurance, your obligation to support her would take precedence over gifts

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that you have given in your will and could mess up any estate planning.

PENSIONS/SAVINGS RRSPs that you’ve each accumulated can be equalized as a part of the settlement by using tax-free rollovers. Talk to your lawyer about the T2220 for rolling over RRSPs. It’s a fast, cost-effective way of dealing with some of your property at separation. CPP pension credits accumulated by each of you over the 35 years that you were together will be equalized. Check out www.servicecanada.gc.ca for more on doing that.

WILLS You will each need new wills and powers of attorney for property

and personal care once a settlement has been reached. If your wife plans to leave everything to the children, that would be easy to put in a will.

REMARriage I have left the toughest part for last. You say that your girlfriend is moving in and that you are either going to live together or get married. This could complicate matters for you. First of all, be aware that if you get married down the road, it will revoke any will that you have made. More importantly, remarriage will automatically give your new spouse legal rights to your estate, possibly spousal support and a right to a share of any home in which you are living.

I can well imagine your children being nervous about your remarrying. The last thing you want is for them to feel that they are in competition with a new stepmother for a share of your estate. With planning, there are ways to meet everyone’s interests. For example, in your will, you could allow your new wife to remain in your new home in the event of your death so long as she needs it. This is called a “life interest.” At the end of her life, the property would fall back into your estate and be divided among the children. There are other options that you can discuss with your lawyer.

I would expect that any lawyer you consult will raise the possibility of a cohabitation agreement if you live common law or marriage contract if you plan to marry. If you live common law and have a cohabitation agreement, it will automatically become a marriage contract if you later marry. These contracts can provide protection for property brought into the marriage, deal with spousal support and work in conjunction with your will. I think they are an absolute must for people entering second marriages or living common law.

LAWYERING UP You will each need your own lawyer to provide independent legal advice on any settlement. Questions will certainly arise and if either of you need more information, I won’t hesitate to shamelessly plug my books, *Surviving Your Divorce: A Guide to Canadian Family Law* and *Do We Need a Marriage Contract? Understanding How a Legal Agreement Can Strengthen Your Life Together*. Or, if you are going to live common law, *Do We Need a Cohabitation Agreement? Understanding How a Legal Contract Can Strengthen Your Life Together*.

As for walking across those hot coals, I find the best protection is being fair with each other. ■

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