

PERSONAL BUSINESS

WEALTH MATTERS

Divorce Funding Firms Help Spouses Expecting Big Payouts

By PAUL SULLIVAN

THERESA EMERSON was married for 29 years when she fled her 6,000-square-foot custom-built house in Palm Desert, Calif., last June.

It was a few months earlier, she recalled, that her husband, with whom she had built an engineering firm they had sold for several million dollars, told her about his chronic infidelity and addiction to pornography and gambling.

They were a religious couple with two children, and she said she had been helping him through his problems with church support. Other issues surfaced that forced her to leave abruptly.

It wasn't until later — after she and their college-aged daughter left — that she realized she was broke.

"I had no car," she said. "I had no money. When I got here, I was desperate."

Here is Northern California. Ms. Emerson, who asked that her maid

"I tried to get a loan against the house or our cabins," she said. "But we own the properties jointly, so how was I going to get his signature on a loan?"

Efforts to reach her estranged husband and his lawyer were unsuccessful.

Ms. Emerson believes the marital estate is worth \$4 million but she has no cash to pursue her half, which she is entitled to in a communal property state like California. So she turned to Novitas, a divorce funding company based in Britain that just last month set up operations in the United States.

Like other firms in the field, Novitas stakes the spouse without access to marital funds and collects its fee after a settlement is reached. How the companies do this is something each one is specific about, since their high interest rates can run afoul of state usury laws.

Novitas says it makes nonrecourse advances at rates of 1 percent to 1.5 percent a month — or 12 to 18 percent a year. A nonrecourse advance is one that the lender cannot recover if the divorce settlement does not yield a payout. Another firm, BBL Churchill Divorce Finance, makes loans for which they have recourse — if you don't get a settlement you still owe money — and charges a similar interest rate. Balance Point Divorce Funding says it makes an investment in a person's divorce, which entitles it to a percentage — it says it is double digits, but less than a third — of the entire settlement.

But what these companies are doing is offering high-interest money to people who have none and want

MaryAnn Landaauer said her ex-husband, now in prison on a fraud conviction, refinanced five properties, stripped them of their equity and sent the money overseas.

to pursue a person they once loved for their share of what is always a lot of money. The firms all say their advances level the playing field against the moneyed spouse who can otherwise force the one without money to settle.

These companies generally lend around 20 to 25 percent of the value of an expected settlement and their minimum loans range from \$100,000 to \$250,000, meaning the settlements are \$400,000 to \$1 million on the low end. The money doesn't need to be

paid back until months or years down the line when a settlement is reached. By design, divorce funding sharply reduces the value of the settlement, but there might not have been a settlement otherwise.

In turn, divorcees provide a hefty return for the companies in the industry, which are largely backed by private investors. Brendan Lyle, chief executive and founder of BBL Churchill, based in New York, said the company had \$150 million from a large, private equity company that he would not name.

In Ms. Emerson's case, she described herself as cash-poor and asset-rich, but also totally unprepared for what happened in a six-week span of 2014. "I never imagined that anyone who said they loved me would ever do the things my husband did to me," she said. "I've learned you need to have your own car, cash and computer and prepare, prepare, prepare."

She spent months trying to find a lawyer, she said.

This is not an uncommon scenario.



CHRIS SCHNEIDER FOR THE NEW YORK TIMES

Financing for those who are asset-rich but cash-poor after a divorce.

en name be used and her exact location not be revealed, spent the next eight months trying to collect enough money from friends and family to pay a lawyer's retainer.

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"A lot of these women go in thinking the house is in both of their names and they have joint accounts," said Nicole Noonan, chief executive of Novitas US. "What happens is the spouses drain their accounts and cut off the credit cards or they find the house is owned by their husband's company."

But Ms. Noonan, a divorce lawyer by training, said the company would also fund living expenses and help clients establish credit in addition to paying legal and accounting fees.

With a home in Palm Desert, cabins in Washington and money from the sale of a company, Ms. Emerson

was in a better position than many divorced women who need help.

"We can't divide furniture," Ms. Noonan said. "We need something to actually fund on."

And that leads to high rejection rates from divorce funders. Ms. Noonan says her firm looks closely at two of every 10 applications and funds one. Stacey Napp, who founded Balance Point after her own seven-year, high-stakes divorce, said even after it narrows the pool down to people who have the assets to qualify for a settlement above its minimum, it still only funds 5 to 10 percent, she said.

The underwriting process is as much about psychology as financial underwriting. "It's not a car loan where you set it and forget it," Mr. Lyle said. "We're on the phone and doing a lot of hand-holding."

Money in retirement accounts, for example, is protected from creditors. Then there are the nuances of Florida's homestead law and other states' and countries' asset protection vehicles.

Divorce funding is still a relatively new industry in the United States, with none of the major companies dating back even a decade. Their clients often hear about them through high-priced divorce lawyers who see it as a way to help their clients get money for expenses — and their fees — short of the long, expensive

and frustrating process of petitioning a family court judge.

"If you needed to make an application to a court to get those fees, you're not only looking at extensive attorney fees and a time delay between when the petition is made and a decision is reached," said Michael Stutman, partner and head of family practice at Mishcon de Reya in New York. "Even though you have a decision, what happens if the person doesn't obey it? You have to appeal it."

And by that point, the spouse without funds is usually desperate. Ms. Napp said most people come to her 12 months into the process when the scope of the fight hits them. Her company then works with them for 18 to 36 months more.

"People in their right mind don't have any experience with litigation," she said. "They think they have \$100,000 and they're loaded for bear. They have no idea how long it lasts."

MaryAnn Landauer said she spent a year trying to save her marriage, after learning that her husband and the father of her two sons had had a mistress for the length of their marriage and another son with her.

During that time, she asserts, her husband refinanced five properties in the marital estate, stripped them of their equity and shipped the money overseas. He did the same

with other investment properties and let their 13,000-square-foot home in Rancho Santa Fe, Calif., go into foreclosure.

They were divorced in 2009 and he paid two months of support and then declared bankruptcy. She was also given half of two notes worth \$4 million that proved to be worthless.

Her husband, Donald V. Totten, who was well known from infomercials he ran in California and Hawaii for mortgage refinancing during the early 2000s, pleaded guilty to mortgage, tax and bankruptcy fraud and was sentenced to 30 months in federal prison in October.

"What this guy did was crazy," said Ms. Landauer, who has been living with her brother in Denver. "I'm trying to fight him and get someone to unwind all the financial settlements. He's behind in child support by \$500,000. It's been very difficult, but I think it can be overcome with a really strong litigator."

She has applied for funding from Novitas.

In many of these battles, which are as much about money as fairness and spite, Ms. Napp said she often shared the advice her own divorce lawyer gave her. "Would I ever understand how much was at stake?" she said. "He said, 'You can't drive yourself crazy with what you think is there.' The question is, 'Is it enough for you to move on?'"

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