

Your Home Is Your Castle

DIVORCE AND THE DIVISION OF PROPERTY

No one getting married ever does so believing that their blissful union will end in divorce, yet recent figures show that around 1 in 3 (Stockport) couples eventually grow sick of playing Mr and Mrs and go their separate ways.

Divorce is one of life's most stressful experiences, second only to buying a house. So when the subjects of divorce and property collide you can guarantee a tough time for all involved.

According to Bramhall based solicitor, Nicola Tiernan, for the majority of separating couples the fear of having to move house is often as great as the thought of the actual separation. She says, "As well as the more emotive attachment of it being your home and your sanctuary, a property is the greatest investment you ever make, representing years of hard slog. No one wants to lose that security or feel like they are taking a step backwards."

Nicola has 16 years of hand holding divorcees through the painful separation process. She believes that there are many myths around the whole question of house occupancy and divorce and that the vast majority of them are inaccurate.

Says Nicola; "We read national newspaper stories revealing gritty details of celebrity divorce with custody battles and big cash payouts. All these stories suggest that there is one winner, usually the wife, and one loser, often the husband. In the real world, the outcome of divorce, and in particular property in a divorce, depends entirely on each individual's circumstances. Children are also an important factor.

"It's often assumed that a wife, who has dependent children living with her, will be able to remain in the family home until the children are grown up, but not always so," Nicola explains, "Of course the belief that it's usually better for the children to remain in the family home is considered by the

Judge when settling the financial implications of a separating couple but other factors are also taken into account.

According to Nicola, these factors include:

Ability to Re-house – can either party afford to purchase another home without the need to sell the family property?

Value of Property – if the property was sold, would the proceeds cover the purchase of two properties?

Individual Assets – are there any other assets, such as businesses or inheritance that would contribute to the purchase of another property?

The length of the marriage, the ages of the parties and their current and future earning potential also influence whether or not a Judge will order the sale of a family home.

Nicola is keen to stress that should a property be sold, the proceeds are not always split equally between the parties. She says, "Whilst most couples jointly own a property, the Judge will consider the same factors as before when allocating shares and has the power to adjust them as they see fit. In some cases there could be one party who made a greater capital contribution either at purchase or during the course of the marriage and this is sometimes reflected in the size of their share."

Less and less separating couples are applying to the courts to arrange their divorce settlement. Instead, they are consulting specialist family solicitors, such as Nicola, to handle the division of assets. Like any other solicitor in this situation, when advising her client Nicola needs to have in mind the approach that a Judge would take if the case was presented before them.

"My role," she says, "is to help a client safeguard their future interests. During this difficult period it's not always easy to make rational decisions. I am able to look at a situation objectively and offer advice with my client's best interests at heart.

"There are steps that I would advise anyone considering a divorce to action. Firstly find yourself a specialist family solicitor; most will offer a free initial interview. They will provide a sense of perspective and map out what you need to do," she adds.

The kind of advice Nicola believes you should expect to receive includes:

Register Your Interest - if a property is not in joint names, you need to protect your interest by applying to the Land Registry.

Have it Valued – ask an estate agent to provide you with a value of the property so you can work out what a possible share might be

Calculate your assets – check how much is outstanding on the mortgage and whether there are any financial penalties should the house be sold.

Investigate Your Options – speak to a financial advisor about raising a mortgage either on your own home to buy out your soon to be ex-partner or to purchase a different property.

"For many people facing separation, the legalities and uncertainties associated with the division of property can stretch out in front like a minefield and all too often, people make mistakes that cost them dearly later in life," concludes Nicola, "an Englishman's home is his castle, no matter how bitter or bloody the battle, you need to fight for your share."

Nicola J Tiernan owns her own specialist family law practice in Bramhall Town Centre, for more information call 0161 439 5286 or visit www.nicolajtiernansolicitor.co.uk

nicola tiernan SOLICITOR

nicola j tiernan, a member of the family law panel (advanced) and a solicitor with sixteen years of experience, has opened her own office in the centre of Bramhall.

Nicola provides professional high quality service whilst ensuring that all matters are dealt with sensitively and efficiently.

• FREE INITIAL INTERVIEW

Nicola recognises the importance of instructing the right solicitor and is therefore pleased to offer a no obligation free initial interview.

• SPECIALIST FAMILY AND DIVORCE SOLICITOR

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