

Feature

When a marriage breaks down...

As well as the emotional fall-out of a divorce, there could be a financial one concerning your home ownership. **Philippa Rudd**, head of conveyancing at Cozens-Hardy LLP solicitors, discusses the legal implications.

Buying your first property as a couple is always a big step, a significant commitment - usually to a mortgage company as well as to one another. It is likely to be the biggest financial acquisition of the relationship.

It may seem distasteful, and it is a sad reflection of the times we live in, but before a purchase where two or more people are buying a property it is really important to think about what might happen if the co-owners fall out. Buyers will be advised to consider carefully in what shares the property should be owned - and if the "Bank of Mum and Dad" have played a part in financing the purchase, certainly the older generation who are digging deep will be keen to ensure

that their investment in the property is protected.

There could be a big difference to the financial split depending if the co-owners are married or not. Nearly half of 18-34 year olds believe that cohabittees have the same rights as married couples on the breakdown of their relationship. This is wrong. More than half of the population are unaware that the "common law" wife or husband is a myth - one person does not acquire rights to a property just because they have lived there for six months, or two years as is commonly thought.

When a marriage breaks down the family court has very wide powers to ensure that there is a fair financial outcome. Unmarried couples cannot apply to the family court to vary the ownership of property on the breakdown of a relationship and this can often lead to an unfair outcome. Generally the court will not adjust the ownership of property when the relationship breaks down if the parties are unmarried.

The best bet if an unmarried couple are buying a house together is to make sure that there is a clear statement about the ownership of the property, a declaration of trust, at the time the house is bought. This will set out the shares that each has in the house. This is particularly important if the parties have not contributed the same amount of money to the property at the time it is bought. If the relationship comes to an end then it is very likely that the house proceeds will be split in accordance with the terms of the declaration of trust.

For married couples, it is well known that if disaster strikes and a marriage fails, aside from the emotional fall

what happens to your home?

“More than half of the population are unaware that that the “common law” wife or husband is a myth - one person does not acquire rights to a property just because they have lived there for six months...”

out, a divorce can prove very expensive. There is no right answer to the division of assets on divorce and this can lead to long-winded disputes. The family court has to take into account a variety of factors when working out what is fair, and there is flexibility. So if couples want certainty or are looking to protect assets acquired prior to the marriage, such as an inheritance or gift, a pre-nuptial agreement will be advised. This is a formal document drawn up by a solicitor before the marriage takes place which sets out the financial terms which the couple agree will apply in the event of a divorce, giving them control, with a view to restricting the court's input if there is a dispute at the end of the relationship.

The law has changed in recent years in favour of prenuptial agreements. For many years the court treated a prenuptial agreement as one of the various factors to consider when reaching a decision about the financial outcome. A prenuptial agreement cannot stop the court from considering the finances but now the court should stick to the terms of this type of agreement provided it is fair in the circumstances, that both parties appreciated the implications at the time of signing, and that the agreement was entered into freely. The necessary procedures must be followed - there is no point scribbling the agreement on the back of an envelope two weeks before the wedding! It is essential for both to provide full details of their financial circumstances to the other in advance of signing the terms, and independent legal advice should be taken. If legal advice is not taken by both parties, it is much more likely that the agreement will be seen as unfair. Plenty of time needs to pass between the signing of the deed and the wedding, so that there is no unnecessary pressure on one or other to sign. To be effective, the terms must be drafted very carefully, and a later formal review of the terms, built into the agreement, may be sensible, for example to take into account the birth of any children. The law in this area is still developing so it is very important to take early detailed legal advice if the idea strikes a chord.

This feature is not a comprehensive statement of the law and you should always seek legal advice.

If you would like any advice on home ownership or divorce, you can contact Cozens-Hardy LLP solicitors as follows

☎ 01603 625231

🌐 lawyers@cozens-hardy.com.

@ www.cozens-hardy.com

in association with **Cozens-Hardy LLP**
SOLICITORS

