Family Law

news and advice from Birkett Long

Winter 2008

Alternatives to Divorce

With falling house prices, a suppressed housing market and uncertain share prices, never has funding two homes on separation been more taxing. Couples are agreeing to live separate lives under the same roof as a result. This can cause a rise in tensions, more arguments and increased bitterness. The children often witness this tension and are drawn into the breakdown of their parents' marriage.

A couple can separate without instigating formal proceedings or entering into an agreement as to division of their assets long term. They can:

- Rent accommodation for one spouse and reduce their mortgage payments to interest only.
- Rent out the matrimonial home (subject to the terms of the mortgage) and rent two smaller properties to live in.
- Use savings or investments to pay for rent.

If this is not possible, agreeing how bills will be paid can avoid arguments. Dividing the property to provide one party with their own living space (perhaps converting the dining room into a second living room and one party moving into a spare room) can help.

If a couple decides to separate, they should consider entering into a separation agreement, whether they are dividing their assets now or placing matters on hold until the economy improves. A correctly drafted separation agreement provides proof of the agreement reached and should be persuasive within subsequent divorce proceedings.

For more on selling the family home upon divorce, see "Economic Downturn" overleaf.

Divorce after a Long Marriage

Recently published statistics suggest that the overall number of people getting divorced has fallen. This is no doubt partly due to more people deciding to live together rather than marry in the first place. However, the overall figures conceal the fact that amongst some age groups the rate is actually rising.

Just under 300,000 people got divorced in the United Kingdom last year. Couples in their twenties are most likely to get divorced, and those who have married young often are the first to start families too. Amongst this age group there are significant legal issues about both finance and access. Although the relationship may have lasted only a few short years, if a couple has young children they are likely to be tied together financially until those children grow up.

Perhaps surprisingly though, it is couples approaching retirement age where the divorce rate is rising and bucking the national trend. This is when people might be in the latter stages of their career with children grown and financially independent.

Faced with the prospect of an active but unhappy retirement, we are seeing an increasing number of enquiries from people in their fifties and above.

With more established pensions, larger assets, and more complex family structures, legal issues to the fore are often:

- The treatment of inheritances which may have only recently fallen in.
- The making of proper wills to take into account obligations to the various members of the families.
- How pensions and income should be shared (if at all).

These are issues that we have to confront on a daily basis. Working alongside colleagues in our specialist Financial Services and Wills, Trusts and Tax teams, we can provide a full service to clients. This means enabling access to specialist advice throughout your working life and into retirement.

BIRKETT LONG LLP

COLCHESTER OFFICE:	CHELMSFORD OFFICE:
ESSEX HOUSE	NUMBER ONE
42 CROUCH STREET	LEGG STREET
COLCHESTER CO3 3HH	CHELMSFORD CM1 1JS
T 01206 217300	**T** 01245 453800

E FAMILYLAW@BIRKETTLONG.CO.UK
WWW.BIRKETTLONG.CO.UK

Trouble with Maintenance Orders

The English Court has the power to vary maintenance orders made at the time of a divorce. The court can increase or decrease maintenance or impose a time limit upon it. The court can also capitalise maintenance, ordering that a lump sum is paid in place of ongoing maintenance.

In North v North [2007] an order was made in divorce proceedings in 1981 which provided for the husband to pay the wife nominal maintenance of 5 pence per annum during their joint lives, until she remarried or until further order.

In 2004, 23 years after the divorce, the wife applied to vary the nominal maintenance order. Her financial circumstances had worsened over the intervening years. The court found that to a large extent this was down to the wife's own actions and poor financial management. By contrast, the husband had accumulated wealth of £4.7 million.

The court hearing the wife's initial application increased maintenance from 5 pence to £16,500 per year and capitalised that figure, ordering the husband to pay her £202,000 instead of ongoing maintenance.

The husband appealed and the Court of Appeal held that in light of the wife's responsibility for a large part of her financial misfortune, the husband should instead pay maintenance to the wife of £3,000 per year and invited the parties to agree a conventional capitalisation of that figure. The figure eventually agreed for capitalisation has not been published.

This rather extreme case shows the potential ramifications of a nominal periodical payments order. It shows that even if a wife is partly to blame for her poor financial circumstances, if she has a financial need and the husband can meet that need, she has a good chance of succeeding in an application to vary and/or capitalise maintenance.

Economic Downturn

Upon divorce, the family home often has to be sold. But with the current slump in the property market, divorcing couples may have to wait until the market picks up or seek to sell at a reduced price.

Parties will be concerned about selling at any price, particularly where the settlement was carefully crafted to enable one or both of them to re-house; a drop in price means the difference between buying a new home and renting accommodation. A recent case suggests courts are reluctant to revisit the terms of a financial order as a result of a drop in house prices.

The court is generally sympathetic as to the effect of mortgage availability on divorce cases but fairness remains paramount. When a Judge decided a wife would need 3 years to secure the mortgage needed to fund a lump sum payment, the Court of Appeal decided that difficulties in the mortgage market were not sufficient justification for this long delay in the husband receiving his money. The time for payment was reduced to 12 months.

Never has it been more important for divorcing couples to research the housing market and the availability of mortgages before obtaining a financial order. If they do not, they may be left with insufficient funds to rehouse.

Insuring Maintenance Payments

Have you considered your situation if the person paying maintenance payments to you, following your divorce or separation, were to die?

- The maintenance payments would stop.
- Your financial situation could be significantly affected.
- How would you pay any mortgage and your bills, and possibly keep a roof over your head?

The solution could be to effect life assurance on the person making the maintenance payments. There are many different types of policy available which can be arranged to suit your needs.

Birkett Long has a team of independent financial advisers who listen to your aims and objectives and provide specialist advice.

To find out more please give our Financial Services team a call on 01206 217309 or 01245 453839; or email financialservices@birkettlong.co.uk.

BIRKETT LONG LLP

COLCHESTER OFFICE:
ESSEX HOUSE
42 CROUCH STREET
COLCHESTER CO3 3HH

T 01206 217300

CHELMSFORD OFFICE:
NUMBER ONE
LEGG STREET
CHELMSFORD CM1 1JS

T 01245 453800

E FAMILYLAW@BIRKETTLONG.CO.UK
WWW.BIRKETTLONG.CO.UK

Reference: NEWS/FAMILY04/2008