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Free guide

SELLING DUE TO SEPARATION OR DIVORCE



Nice to meet you.

Selling a house after divorce or separation can be one of the most stressful things people can experience. In most cases, a couple wants to know who gets the house in a divorce? Unfortunately it's just not as simple as that.

Whatever the statistics say, divorce continues to be a devastating and stressful burden for any family to go through. And when children are involved, this makes the business of selling a family property even more crucial. Because the matrimonial home is usually the most valuable asset jointly owned by a couple, feelings are often strongest over your house. Our guide looks at all of the important considerations when selling a house after divorce.



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What happens if we have children?

Going through a divorce throws up many different issues, and few of them are pleasant to deal with. One important question people often ask is about who gets the house in a divorce with children.

If it's possible to agree who gets the house after a divorce in an amicable manner, then all the better. However, if you and your partner cannot agree on a financial settlement, you may have to turn to the courts.

A family court can set up a Financial Remedy Order. This enables you to challenge your partner in court for a lump sum payment or ownership of a property. The order can also set up regular payments for childcare and living arrangements.

Sometimes, the house may be in name of one partner. But the courts generally disregard this when they decide what happens to the house in a divorce.



How do the courts work?



When they impose a Financial Remedy Order, the court will base its decision on:

- Whether there are any children aged under 18 in the marriage. If so, what their needs are and who they live with at the time of separation. The welfare of these children is the court's first consideration.
- Income, potential future earnings, property and any other financial resources each party has.
- The age of each spouse.
- The length of the marriage.
- Any mental and physical disabilities either spouse has.
- Annual earnings of each spouse. And their responsibilities during the marriage.
- The finances and assets each spouse contributed to the marriage.

Often, it may be decided that it is best for children under the age of 18 to stay in the family home with one of the partners.

Living arrangements during separation and divorce need some careful thought. Counselling service Relate advises that it is important to take time in making these decisions, especially if you have children.

How is a house divided?

Among the choices you could face is that one spouse could buy the other out and keep the property. Alternatively, the house could be sold, and then the proceeds divided. A strong family law solicitor could help run through how the legal and conveyancing process works.

If you have children, one parent will often want to stay so there is as little change as possible in the family home. In terms of who gets to stay in the house after a separation, this may be the mother.

When one spouse moves out, the other partner may receive other assets to help with the division of assets in the divorce.

You or your partner may agree to defer receiving the balance until the property is sold, when the children move out, or the partner remarries. In legal terms, this is commonly called a Mesher Order. People assume divorce house rights are 50:50, but this isn't automatically the case.

What is a Mesher Order?

In terms of dividing up assets in the UK, the courts will look at a couple or family's circumstances. A Mesher Order makes certain instructions clear. It defers the sale of a house until a specific event, such as the youngest child turning 17 or 18. After this, the proceeds are divided in accordance with the court order.

There are risks and downsides to a Mesher Order that should be discussed in detail with your solicitor and considered carefully.

Can I sell my house before divorce?

So, when is the 'best' time to sell a house if you are going through a divorce? Clearly, no time is ideal. But if you can come to a mutual, amicable agreement before you separate then that is best. If you come to an impasse, then it may be time to seek solicitor advice and/or mediation.

Lack of clarity on the sale of your marital home can create extra tension that affects other areas of your new life. One sensitive area you should try to resolve is reaching an agreement on the final sale price for the house. This can be the subject of a lot of tension during a divorce and can lead to making decisions that are based on short-term 'quick-fix' finance issues alone, rather than the longer-term objectives and benefits. Finding the right balance will be beneficial to you both and help you get on with your separate lives.

Divorce or separation is a highly emotional time. To deal with the emotional side of things, relationship experts Relate have some good advice on their website.



Who gets to stay in the house after separation?

This is another hot topic during the difficult time of a divorce. It is normal for one spouse to move out of the house during a divorce, to reduce the tension. However, while this is traditional, it does not mean the person who moves out loses any rights to the ownership or occupancy of the house.

In fact, both partners legally have 'home rights' to the matrimonial home until the divorce is finalised. Or until a financial settlement is agreed.

Divorce rights to property ensure that neither spouse can be forced to leave the matrimonial home. Even if they don't legally own the property or aren't named on the mortgage.

If you and your partner own the house or flat, certain rights to property after separation are protected. Provision for this has been made under the 1996 Family Law Act.

These rights include to stay in your home, unless a court order excludes you from being there. You must also be notified of any possession action your mortgage lender takes, provided matrimonial home rights have been registered.



If you are the spouse who moved out, the court must also enable you to return to the home. The law also requires that you pay the mortgage and avoid repossession, if the person named stops making the payments.

More advice on dealing with your mortgage during separation and divorce is below. But, please don't hesitate to contact us for a constructive and confidential conversation with our mortgage specialists.

Should I consider refinancing?

You could think about re-mortgaging your property as you look to sell the house after your divorce. Refinancing could allow you to access the equity in your property. However, before you can consider refinancing you'll need to calculate the value of your property. This is so that you can be sure there is sufficient equity to allow for refinancing.

This could allow you to effectively buy out your ex-partner's share. If you are looking to stay in the property, this a great option. However, you may decide that you would prefer somewhere new to live to help make a clean break.



Dividing the money and property during a divorce

Perhaps you can sell your property before the divorce is finalised. Then there are options for how you and your partner divide up the money and property.

Both you and your spouse could agree to sell your house and move out. The money raised would be divided according to any agreement you made when you bought the property. And the cash could be put towards buying a new home for each of you.

Alternatively, one party agrees to buy the other one out. Your home will need a valuation. Then, if you have the funds to cover half of this, you can purchase your partner's share. And take full ownership of the property.

Or one partner could keep the home. They could continue to live in the property, which may be convenient if, say, your children are at school nearby.

Part of the property's value can be transferred from one spouse to another. The partner who gave up a share of their ownership rights would retain a stake in the home. And they would receive a percentage of the property's value once it is sold.



Keeping up mortgage payments

Although some people don't think about this issue, one thing that can't be forgotten is keeping up mortgage payments. In a divorce, you may be thinking more about selling your house. Not keeping up regular mortgage payments is the reason homes are repossessed by banks and other home loan lenders.

Unfortunately, no exceptions are made for people going through a divorce. Someone needs to keep paying the mortgage. Even if you have moved out of the family home, you may well be responsible for keeping up mortgage payments until such time as the property is sold. Having your name on the contract means you are liable for the whole debt, even if it is a joint mortgage. If you set up a joint mortgage with your partner, you have both agreed to be equally liable for the debt until it is settled.

It doesn't matter that you may no longer live in the property anymore. You have an obligation to keep paying the mortgage on a regular basis.

The best idea is to talk to a mortgage lender as soon as you can, if you are separating. This step is especially important if you think keeping up the mortgage repayments will be a problem. What you should also do is establish your divorce rights to property after you separate for good. This will prevent your partner from transferring, selling or mortgaging the house without your knowledge.

Your spouse may own the property in their name alone. If so, a key step is to protect your property rights after divorce by registering them with the Land Registry. During a divorce or a separation there is a lot to take into consideration. If your relationship has reached the point of breakdown, it is best to consult professionals like a divorce solicitor. They will have the experience and knowledge to handle matters like property sales during divorces and can give you expert advice.



<p>BILLINGSHURST</p> <p>01403 785288</p> <p>billingshurst@mansellmctaggart.co.uk</p>	<p>BRIGHTON</p> <p>01273 508955</p> <p>patcham@mansellmctaggart.co.uk</p>	<p>BURGESS HILL</p> <p>01444 235665</p> <p>bh@mansellmctaggart.co.uk</p>	<p>COPTHORNE</p> <p>01342 717400</p> <p>copthorne@mansellmctaggart.co.uk</p>	<p>CRAWLEY</p> <p>01293 533333</p> <p>crawley@mansellmctaggart.co.uk</p>	<p>CROWBOROUGH</p> <p>01892 662668</p> <p>crow@mansellmctaggart.co.uk</p>
<p>CUCKFIELD</p> <p>01444 417600</p> <p>cf@mansellmctaggart.co.uk</p>	<p>EAST GRINSTEAD</p> <p>01342 311711</p> <p>eastgrinstead@mansellmctaggart.co.uk</p>	<p>FOREST ROW</p> <p>01342 826682</p> <p>fr@mansellmctaggart.co.uk</p>	<p>HASSOCKS</p> <p>01273 843377</p> <p>has@mansellmctaggart.co.uk</p>	<p>HAYWARDS HEATH</p> <p>01444 456431</p> <p>hh@mansellmctaggart.co.uk</p>	<p>HORSHAM</p> <p>01403 263000</p> <p>horsham@mansellmctaggart.co.uk</p>
<p>HORLEY</p> <p>01293 228228</p> <p>horley@mansellmctaggart.co.uk</p>	<p>HOVE</p> <p>01273 044929</p> <p>hove@mansellmctaggart.co.uk</p>	<p>Land & New Homes</p> <p>01293 533333</p> <p>01444 456431</p>	<p>LEWES</p> <p>01273 407929</p> <p>lewes@mansellmctaggart.co.uk</p>	<p>LINDFIELD</p> <p>01444 484084</p> <p>lind@mansellmctaggart.co.uk</p>	<p>MID SUSSEX Lettings</p> <p>01444 239822</p> <p>ms@mansellmctaggart.co.uk</p>
<p>RINGMER</p> <p>01273 407929</p> <p>ringmer@mansellmctaggart.co.uk</p>	<p>NEWICK</p> <p>01825 722288</p> <p>new@mansellmctaggart.co.uk</p>	<p>STEYNING</p> <p>01903 251200</p> <p>steyning@mansellmctaggart.co.uk</p>	<p>STORRINGTON</p> <p>01903 746000</p> <p>storrington@mansellmctaggart.co.uk</p>	<p>UCKFIELD</p> <p>01825 760770</p> <p>uf@mansellmctaggart.co.uk</p>	<p><i>Get in touch</i></p>



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