

The family home holds unique status amongst a family's assets in the eyes of the English family courts.

The family home is generally the most valuable asset owned by a couple. On divorce it is considered a unique asset and is given special treatment by the family courts, which take the view that its primary concern is to ensure that each party has a roof over his/her head with priority to providing a home for any children. The family home may be owned in various different ways. It can be owned by one party or jointly, or it can be owned by a company and/or held in a trust structure. Although it is possible for a couple to be married and for the home to be owned in the name of one of them, the family courts generally see little relevance in this when it comes to dividing the assets on divorce.

NB. The court's approach in resolving disputes between unmarried couples is very different and the way in which the property is held will be highly relevant to a dispute about ownership.

On divorce, the courts can make various orders in respect of the home:-

- It can order that the home be transferred from one spouse to the other;
- It can order a sale and for the proceeds to be divided between the spouses in specified amounts in percentages;
- It can order that the home be kept in joint names but that only one person (usually the parent with day to day care of the children) remains living there and the home is then sold at a later event such as death, remarriage or the youngest child finishing education.

Problems can arise where parties make unequal contributions towards a property purchase. This is happening more so in recent years with the increasingly high cost of property, with family members often providing assistance to first time buyers. In one recent case the wife had been given £1m by her grandparents and had savings of £200,000, all of which she used to buy a property worth £1.2m. She and her husband lived in the house and used it as their family home. The husband contributed nothing. On their divorce, the court's starting point, much to the wife's surprise, was that the husband had effectively received a gift of £600,000 from her. Of course that presumption could be displaced, but it was for the wife to make that case, not the husband. This can be hard and expensive.

Where a party with legal ownership of the home deliberately tries to usurp the family court's power to deal with the property by using other methods of ownership, such as putting it into a trust or transferring it so that it is held by a company, the court can generally vary such a transfer or even declare it void.

A court will always give priority to any children of a marriage. Therefore the parent who will have the main care of the children will often succeed if he/she applies for the marital home to be transferred to him or her even if there is to be some payment when the children have grown up. Even if there are no children the presumption is still for equal division of the property, regardless of where the money has come from, unless either party can show that this would be inappropriate (such as a short marriage with no children, or if the assets exceed both parties' needs and the house has been purchased with assets built up by one party before the marriage). It is a common misconception made by a person who puts the majority of the funding into the matrimonial home that their contribution will automatically be protected on a divorce. **It won't.**

Where there are not enough assets to meet both parties' needs, the family court may not be able to take account of either parties' greater contributions to the marital home; hence the equal division which is always the Court's starting point.

There are various protective measures that couples may take, whether married or unmarried, in order to protect their contributions to the home. For example unmarried couples would be advised to enter into a deed of trust recording their respective contributions. Living Together (or Cohabitation)

agreements may also be recommended. Couples who intend to marry can enter into pre- or post-nuptial agreements as well as deeds of trust.

These are the stark realities that people should think about when entering into marriage and buying a home together.

At Alison Fielden & Co principal Alison Fielden can advise on property aspects such as deeds of trust and Family Solicitors Heather Weevill and Steven Barratt can advise on Living Together Agreements and Pre & Post Nuptial Agreements. Ring 01285 653261 for an appointment.