

A guide for

SELLING YOUR HOME DUE TO SEPARATION OR DIVORCE



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Contents

- 03** Welcome
- 04** Money talk: mortgages, finances, and the rest
- 05** Dividing money and Property During a Divorce
- 07** What is Mesher Agreement
- 08** Who Gets the House in a Divorce with Children?
- 11** Understanding Your Property Rights

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Welcome,

During the last 10 years we've been serving the people of Fenland, we've helped hundreds of clients take their first steps onto the property ladder.

Our experience means we know just how exciting, terrifying, inspiring, and overwhelming the whole process can be.

Some people are excited about moving out of rented, shared accommodation, or parents' homes.

Others are anxious about the amount of responsibility, paperwork, and money this move involves.

We are here to guide and support you throughout the ups and downs of your home buying journey.

Our aim is to ensure you have the right guidance and support to help you make the best decision for you and your future.

After reading this, you may find it beneficial to have a no-obligation, confidential chat with us about your situation.

Thank you for your time, and please get in touch with us if you have any questions whatsoever.



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*Disclaimer: The information in this guide does not constitute legal or financial advice.

Money talk: mortgages, finances, and the rest

Unless you've got a Picasso above the mantelpiece, the chances are your family home will be the most significant shared asset you possess.

So, it's no surprise that, along with childcare, it can be the biggest cause of issues in the event of a marriage break-up.

Invariably, adding further stress to an already painful situation.

If you're in the process of separating or getting a divorce, you have our sympathy.

It's an upsetting time.

Most of the pain you can't avoid, but we can give you some advice here to prepare you for what to expect if you find yourself needing to sell your home due to separation or divorce.



Dividing Money and Property During a Divorce

When you decide to divorce, you and your ex-partner will need to agree on the marital assets, namely: any property, savings, pensions, and investments. Ideally, you will come to an amicable decision between yourselves – such as a separation agreement – but with emotions running high in a break-up, unfortunately, this isn't always the case.

If you haven't agreed on a split of the assets, then an impartial third party can help guide you and help you negotiate.

Mediation is often the friendliest way to proceed, is also a great deal cheaper than the fees, and often the animosity that results from leaving everything in the hands of a court.

Mediators listen to both sides of the story and try to help you come to an agreement that suits both parties. They are an impartial go-between to let you know your options, help you keep the lines of communication open and hopefully find a solution to avoid or minimise any time in court. They're not there to advise; they're skilled experts in communication to help you find your own solution.

When separating, some of your biggest questions are likely to be regarding the property owned jointly between you and your ex-partner. Indeed, there is a lot to consider.



What Are Your Options with The Property?

Put simply: you can sell up or stay put.

If you decide to sell, you need to agree on the split of the sales returns. In a perfect world, you agree on the split, sell the property quickly, and you both have enough money to move on for a fresh start elsewhere. However, this is not always possible.

The most clear-cut next option is when one partner stays and buys the other one out. This allows for a nice, clean break and minimises the upheaval (for any children, especially). However, this might not be financially possible. If the person staying can't afford to buy the other one out then there is the option to take over the mortgage themselves or continue sharing its obligations between you, with the person moving out due their share when the house is sold later.

Several legal steps can be taken to help formalise this arrangement: a Mesher Order and a Martin Agreement.



What is a Mesher Agreement?

Otherwise known as an 'Order For Deferred Sale', this means the partner that moves out maintains their share of the property but that the property itself can't be sold until an event is triggered at a later date. Typically, this will be the children reaching 18 years of age or moving out. A legal agreement sets out what the triggering event will be, how the mortgage and maintenance will be paid for, and how the proceeds will be split.

What is a Martin Agreement?

A Martin Agreement also sets a date for a deferred sale, but it is used if there are no children under the age of 18. Here another event is used to trigger the sale - for example when one party dies, moves out or begins co-habiting with someone else.



How Is a House Divided in a Separation or a Divorce?

If you and your ex-partner cannot agree on how the property is divided, a court must help. There are several factors they will take into consideration. These include:

- Any children under the age of 18, their needs and who the primary 'care-giver' will be
- The ages of the respective spouses/ civil partners
- How long the marriage/partnership lasted
- The value of the couples' assets: both what they brought into the marriage/partnership and what they had when it ended
- The earning potential of the spouses/ civil partners, as well as their respective responsibilities while they were still together and after the relationship ended
- What each party contributed financially throughout the relationship and the agreed responsibilities after
- The standard of living throughout the relationship
- Whether either of the parties has any disabilities



Who Gets the House in a Divorce with Children?

While all these factors are used to make a decision, the welfare of the children is always the most important; the aim, to maintain as much stability and continuity as possible amidst all the other inevitable changes. So, the decision as to with whom the house remains is usually tied-in with the one made regarding the custodial rights.

Of course, in this case, the other party will still likely have their mortgage obligations and, later, rights to the proceeds from its eventual sale.

Can I be Forced to Sell My House in a Divorce?

If your case has made it as far as the courtroom, then, yes, the judge has the power to enforce a sale of the house. However, the welfare of the children is a critical factor. More specifically, consideration is given to their age, who the primary caregiver is and how best to ensure their security and stability. Other considerations include who bought the house, the amount of equity, the reasons for the divorce and the respective financial circumstances of the two partners. These are all, however, secondary to the concerns for the children.



Should I Sell My House Before or After a Divorce?

This is a decision only the two ex-partners can make, and much hinges on the relationship that remains between them. Again, the intentions regarding the children must be considered first. They both have their benefits and drawbacks.

Selling Your House If You Are Separated, Before a Divorce

Selling before a divorce has its obvious plus points. You can agree on selling terms and both move on, cutting the big financial tie and ensuring you have some money to help you both make your fresh start.

Selling a House After Divorce

Selling after a divorce has the benefits that time allows: more scope to make the best decision financially, not driven by the emotion of wanting to cut your ties and be done with it. Again, this is all dependent on the relationship between the two ex-partners.

Who Gets to Stay in The House During Separation?

Until the divorce process is settled and finalised, both sides are entitled to remain in the property. That's the legal standing. In practical terms, that's very rarely an option. The common-sense solution is that one party leaves to help reduce the potential for tension and conflict. Once again, an amicable agreement as to who stays is the best option. But don't worry, if you decide to be the one who moves out, this won't affect your legal position when you come to selling up and settling your entitlement



Understanding Your Property Rights

While you are still married, both parties have equal rights to live in the property. However, if your name is not on the title deeds you may want to take the precaution of establishing your 'matrimonial home rights'.

Check with HM Land registry e-services as they will confirm this for you. If your name isn't there, then you need to fill out a HR1 form on the gov.uk website to get a Class F Land Charge. This prevents your ex-partner from selling, transferring or increasing the mortgage without your knowledge. The Family Act of 1996 also means that:

- You can stay in your home unless ordered out by the court
- You will be notified if any repossession action is taken by the mortgage lender
- You'll be informed of any intention to sell by your ex-spouse
- You have the option to pay the mortgage to stop repossession if your ex stops making their payments.

Home rights are useful protection in the short-term (before anything is finalised in the courts) but they don't have any bearing on the longer-term decisions, such as who gets to live in the property afterwards or whether it will be sold or not. That will rest with the judge.



What Steps Do I Need to Take When Selling a House During Separation or Divorce?

So, where do you go from here?

Once you have decided to sell, you must prepare yourself properly to ensure the process is a smooth and stress-free as possible.

Step One: Instruct a Solicitor

You will need legal advice, so contacting a solicitor is essential. Your solicitor will talk you through all the legal implications you need to consider and provide financial guidance.

Step Two: Contact Your Mortgage Provider

You should let your mortgage provider know that you and your ex-partner are separating as they may be able to offer you expert financial advice. It's crucial you keep making your mortgage payments on time to avoid affecting your future credit rating and to avoid your home being repossessed. Speaking with your mortgage provider is particularly helpful if you need to reduce your monthly payments or take a mortgage holiday while the details are sorted out.

Step Three: Instruct an Estate Agent

Choose an estate agent who understands your situation and keeps both parties informed through the entire sale process.

Step Four: Keep All Lines of Communication Open

Separating or divorcing is a highly emotional situation, so all parties must communicate regularly and remain transparent. Both parties should be updated on progress, including viewings and feedback.

A guide for **SELLING YOUR HOME DUE TO SEPARATION OR DIVORCE**



Dos And Don'ts When Selling Due to Separation or Divorce

Don't be tempted to sell to companies offering quick home buying services

Some companies provide speedy sale services. Even if you are looking for a quick sale, don't be tempted. You may end up selling your property for less than it's worth. Instead, choose a reputable agent who understands the need to achieve the best outcome for you.

Don't go with the highest valuation and cheapest fee!

If you're separating, it's natural you should want to achieve the best price for your property. However, you could end up instructing an agent who has over-valued (because they want to win the instruction, not because the property is worth the figure they quote). If your property has been overvalued, it may take longer to sell, which is not ideal if you want a fast sale. Likewise, consider that cheaper fees may mean you don't get the best standard of service, care, or satisfaction throughout the sale process.

Do research the market..and estate agents

Always get more than one estate agent to value your property before making your decision. This will help you gauge the price you should market your property at but will also help you work out which agent you feel the most comfortable with and can trust to sell your home. You'll be able to gauge who you have a rapport with and who you feel you can trust.

Check each estate agents' fees, testimonials, reviews, website, and social media accounts.

A guide for **SELLING YOUR HOME DUE TO SEPARATION OR DIVORCE**

Do go with your gut!

If you don't feel you have a rapport with an agent, or you feel they are unfriendly, don't listen or are just not interested in you, look elsewhere. Your agent must want to establish a relationship with you and be one whose focus is on the standard of service they offer you. Look for an agent who values the relationship rather than your property!

Do finalise your divorce before moving out of the marital home. It's natural to want to move out of the house immediately, but most divorce solicitors will recommend you stay in the property until your divorce is finalised. Check this with your solicitor.

Do agree on what belongs to who

It's a good idea to list items in the home that belong to you and what you would like to take with you once the sale is complete. Agree with your ex-partner on how to split furniture and other belongings so that there is no conflict or misunderstandings on moving day.

Final Thoughts

We hope that your next step when selling your property due to separation or divorce is a better informed one. The emotional turmoil from a relationship breakdown is hard, so whatever small degree of stress you can alleviate by knowing your options is a welcome one.

It might be easier said than done, but the cleaner and the more amicable a split you can work out with your ex-partner, the best it is for all parties, for many reasons.



A guide for **SELLING YOUR HOME DUE TO SEPARATION OR DIVORCE**

Any children involved will benefit from not having too much conflict added to the inevitable upheaval they will face.

You minimise the stress – both emotionally and financially and, just as important, it's so much better for your mental health.

It is, of course, in your best interests to consult a qualified, experienced solicitor to talk through the specifics of your situation. They can explain in more detail the laws as they affect you and help you avoid any costly mistakes and further heartache down the line. Whatever decisions you make and whatever happens, we wish you the best of luck navigating one of the biggest challenges life can throw at you.

If you have any questions about anything in this guide remember we are here to help, so please feel free to contact us at wisbech@valiantproperties.co.uk or call the office on 01945 461116



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