

## **BENNETT GRIFFIN FAMILY NEWS**

### **Why should you use a Solicitor in Matrimonial Proceedings?**

There are many divorce self help books and sites on the internet that might lead you to believe that it is cheaper, quicker and easier to 'do it yourself.' However, is it really that simple and will you save money or will it be a false economy?

As matrimonial lawyers we are often consulted by clients who have tried to deal with the divorce and resolution of the property and financial implications 'in person' (on their own), but who have then sought help when complications have arisen or when they have felt 'out of their depth'. Sadly, for some, the mistakes have already been made, and when they come to see us it's a matter of damage limitation. The results can be devastating. Please read on so as to avoid this happening to you

#### Common Pitfalls

##### *1. Crossing out the ancillary relief claims in a divorce Petition!*

When dealing with divorce proceedings, as the Petitioner, don't delete the prayer for ancillary relief in the Petition as by doing so you are excluding the Court's jurisdiction to approve or impose an order about the finances, as it will appear to the Court that you won't need any help sorting out things. If you later discover that you do need the help of the Court, you will have to ask for 'leave' (permission) of the Court to be able to even start an application about the finances. If your spouse consents to the application for leave the Court fee can be limited to £40, but where the application is opposed the fee is £180. This additional expense not to mention the Solicitors costs in preparing the application, and the wasted time taken in making the application, could be avoided by taking early advice as to how to draft the Petition.

##### *2. What happens if you agree a division of the matrimonial assets with your spouse but fail to record the agreement with the Court and therefore don't have an Order?*

There is every possibility that your spouse will come back and seek further provision, particularly if there has been a deterioration of his or her financial circumstances. You may have been fortunate to have been awarded a huge pay rise or won the National Lottery since you divorced and, not surprisingly, your former spouse may want to re-think his/her claims against you. Parties to a marriage have rights to make financial claims against one another for maintenance (i.e., income payment); lump sums (i.e., capital payments); adjustment of property ownership (i.e. transfer from one spouse to another, or

a sale of a house) and pension arrangements (i.e. sharing a fund now or attaching an Order so it's divided upon retirement). These rights usually come to an end by a final Court Order. Where one or both parties to the marriage do not wish to proceed with financial claims, then provided the Court agrees that such an order is appropriate, an order can be made dismissing claims. Decree Absolute does NOT in itself prevent a former spouse from making a financial claim against you, but a final Court Order can!

*3. What happens if you remarry before resolving the matrimonial and property issues?*

You are caught in the re-marriage trap. The effect is that you lose the right to make most financial claims against your former spouse. An exception is an application for a pension sharing order (as opposed to a pension attachment order). Such an application can be pursued on remarriage provided there is no other provision in relation to pension in place. Your re-marriage does not prevent your former spouse from making claims against you (assuming they've not re-married also), and so again, a final Court Order is vital.

*4. Do not underestimate the need for full financial disclosure on both sides.*

You may feel uneasy about revealing all of your details, but, imagine how you will feel if you agree a settlement based upon very limited or no respective disclosure and subsequently discover that your former spouse had savings stashed away that could have led to a different final agreement. If a final Court Order is made, that is very often the end of the story, and you've lost your chance of including reference to your former spouse's savings. Disclosure safeguards against anything being missed out from the division of assets and ensures that a fair and reasonable settlement is achieved. It is often the case that a spouse, who will not disclose his /her assets to the other spouse, will give the information when solicitors get involved.

*5. If you are acting in person, the Court can only protect your interests to a certain extent.*

It is for you to take legal advice about a proposed final Court Order. The Court will do its best to ensure that you are not disadvantaged within any proceedings if you do not have a Solicitor, but, ultimately, the Court cannot advise you substantively about the law or as to what to do next. A Solicitor acting for your former spouse cannot advise you as to the law either. If you refuse to take legal advice about a final Court Order, having been given the opportunity to do so, you will only have yourself to blame if things don't go as you had hoped or you don't understand what you may have agreed to!

*6. How can you separate the emotional issues from getting on with sorting out the finances?*

We all have difficulty focussing on the task in hand and being practical and realistic from time to time, and when everything that is more important to us is at stake, it becomes even more of a challenge. Bennett Griffin understands

the mixture of stresses that separation and divorce can present. We will endeavour to 'turn down the heat' on volatile situations and act as a buffer when you can't face dealing with your spouse. We are here to represent and protect your interests robustly with a view to achieving an equitable result for you and your family.

We at Bennett Griffin have the expertise care and attention to help you through what is often a daunting and confusing process. Give us a try: we do what we say.