

Family Brief

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The Family Team at Brooks & Partners have a wealth of experience in matrimonial cases and other areas of Family Law.

DIY Divorce - Who needs a solicitor?

There is a plethora of guidance on the web on how to do your own divorce, including packages which provide the forms for a relatively low fee. The problem with these websites is that they are alright for couples who have had a very short marriage, have had no children and who have no assets. But these couples are in the relative minority. However, even these couples should give consideration, and in many cases seek advice on the impact of divorce on for, example, welfare benefits and immigration. In most cases, a relationship breakdown can have profound consequences on the financial status of the parties which needs to

be considered, preferably before concluding the divorce. By applying for decree absolute prematurely, the petitioner can terminate their entitlement to benefit under their spouse's pension. Consideration also needs to be given to what should happen to jointly owned property. It is rarely advantageous for the matrimonial home to continue to be held in joint names after the end of the marriage. Thought should also be given to making another Will. As well as the above consequences, of which in some cases the parties may be wholly unaware, there are the more obvious issues such as the arrangements for any children including residence and

contact. Unfortunately, whilst in many cases the parties are able to resolve these between themselves, in many others professional assistance is required whether from a mediator or a solicitor. At Brooks & Partners, we have many years experience of dealing with all these issues. Just by taking advantage of our initial half hour free appointment many of them can be highlighted. We recommend that anyone reading this article who may be going through a relationship breakdown of any kind arranges an initial appointment with Deborah Prance by calling 01276 681217 or emailing her at: deborah@brooks-partners.co.uk

Mortgage Risk an ex-wife should be allowed to take

Often when a marriage ends, the matrimonial home is the subject of dispute and it is common for an order to be made for it to be sold with the proceeds divided between the parties.

In a recent case the wife wanted the family home transferred into her name after the divorce, leaving the existing mortgage in place. The judge agreed she was entitled to do so, but her application was unsuccessful because he did not believe she would be able to pay the mortgage. The judge also refused to transfer the property to the husband (who also wanted it) because this would deprive the wife of her entitlement to it. The situation was not helped by the fact that the property had been used as security for the husband's business borrowings. The judge ordered that the property be sold and the husband should continue to pay the mortgage until this was completed. The wife appealed this decision and the Court of Appeal overturned the ruling, allowing the wife to retain the home. Normally the interests of the children are paramount as displayed in this case. The feeling was that if the wife was willing to take the risk of being unable to make the mortgage payments, she should be allowed to do so.

We are currently producing Employment, Business and Private Client newsletters which will be sent out regularly—if you are not receiving a copy and would like one please contact Vickie Lennard or Kate Brooks on 01276 681217 or e-mail: vickie@brooks-partners.co.uk stephanie@brooks-partners.co.uk

We have recently updated our website, take a look and let us know what you think through our BLOG! www.brooks-partners.co.uk/BLOG

Pre-Nuptial Agreements- a change in the law?

by Deborah Prance

If a Pre-Nuptial Agreement is considered fair by a court, given the circumstances of the parties on their divorce, it will be upheld.

Much has been made in the press of the long-awaited decision of the Supreme Court in the divorce case of Radmacher v Granatino which was delivered recently. The Supreme Court decided by a majority of 8 - 1 that the Pre-Nuptial Agreement made between a German multi-millionaire and her French husband prior to their marriage in 1998 should be upheld. The Agreement was expressed to be subject to German law but the parties were living in England by the time of their divorce, hence the divorce took place here. The parties separated in 2006. In England, unlike some other European states, only English law is ever applied. A couple lives within the jurisdiction of the English court and the court applies English law, not the law of the country in which the Agreement was made, nor the law of the parties' nationalities.

It remains the case that Pre-Nuptial Agreements are not automatically binding in law in England and Wales. Such an Agreement is only one factor for the courts to

take into account when considering the factors set out in section 25 of the Matrimonial Causes Act 1973 which govern the financial settlement that a court will order. The overall aim is to achieve fairness which, for most parties, means meeting the parties' "reasonable needs". If a Pre-Nuptial Agreement is considered fair by a court, given the circumstances of the parties on their divorce, it will be upheld. If it is not, and needs take precedence, then it may still be taken into account in determining the final outcome even if the arrangement is not fully applied.

In this divorce case, it was considered that it was fair to hold the couple to the Agreement even though Mr Granatino had not had independent legal advice, which we would always recommend. The court commented that Mr Granatino was extremely able and his own needs would in large measure be indirectly met from the generous relief given to cater for the needs of his two daughters until the younger reaches the age

of 22. Fairness did not entitle him to a portion of his wife's wealth, received from her family independently of the marriage, when he had agreed he should not be so entitled when he married her.

It has to be remembered that this case is far from typical and in many cases, the court would not consider it fair for the parties to be bound by a Pre-Nuptial Agreement, particularly if their circumstances had substantially changed after, say, a long marriage with children. In more typical cases of this type, needs would usually dictate that one party should receive more generous financial provision than might be provided by the Pre-Nuptial Agreement. The Law Commission is currently considering whether to make Pre-Nuptial Agreements automatically binding. The challenge will be to ensure that proper consideration is given to ensuring that less wealthy parties are not adversely affected by any change in the law. For further information and advice, contact Deborah Prance on 01276 681217 or e-mail: Deborah.prance@brooks-partners.co.uk

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Don't leave the Child Maintenance unpaid

A wealthy man has been ordered by the court to prevent him from selling his house until he pays the outstanding child maintenance arrears amounting to more than £78,000. He had failed to pay any maintenance for over 12 years and the CSA (now part of the Child Maintenance and Enforcement Commission) were concerned

that he would place the funds from the sale of his property out of the jurisdiction of the Court. The Commission has the power, in certain circumstances, to order the possession and/or sale of property, the imprisonment of or even arrange a ban from driving for those who have substantial arrears of child maintenance.

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