



Protecting your property in divorce or separation

By Sarah Beskine

What if you tell your partner that you are thinking of separating, and they react by emptying the bank accounts, running up debts and maybe even selling the home or other family property? The fear of this can hold couples back from open discussions. I advise on divorce/separation and this is a frequent worry for separating couples, when trust is at an all time low.

So, what should you do if you are concerned about this? There are ways to protect assets, to give you space to negotiate. This protection cannot be obtained through negotiation or mediation. Negotiations can alert an unscrupulous ex-partner to emptying the bank. Protection might need to be in place in advance if you fear your partner's response, and then you can negotiate.

The court is very alive to this problem. The court has wide powers in divorce to re-adjust ownership including taking into account unscrupulous removal of assets. However, if they have actually been removed and perhaps spent unwisely, it might be too late. The best step is to be safe and to make sure it doesn't happen.

You can contact your banks, find out the size overdraft/ loan your accounts allow, think about reducing overdraft facilities, and close joint accounts. Check with your mortgage holder to make sure additional loans cannot be taken without your active consent. Be aware of any step that might alert your partner before you are ready.

One essential first step is to protect property that is not in your name. You can register an interest in it, so that steps taken by your partner to mortgage or sell should come to your attention in time for you to do something about it.

Once you have issued divorce and finance

proceedings you can register your interest at the Land Registry in property owned by your spouse. You can do this before informing your partner as long as you have a good reason. If you are not married you can still register an interest if you make a claim in court for a share. There is extra protection for the home where the family lives. If it is not in your name or joint names but just the name of your spouse, you can register your interest very simply and cheaply, without even issuing divorce proceedings. With this protection in place you can feel more confident in starting negotiations to try to settle how to split assets by agreement. You can't negotiate if you are in fear that the 'pot' will be emptied in the meantime.

If things have gone further, and you become aware that the property is in the process of being sold, you need to take more drastic action. In a divorce, you can ask the court to make an injunction order to prevent the sale or even reverse the sale in some situations.

If you are thinking of separating but you have some doubt about whether your family assets would still be there by the end of any negotiations, it is important to get advice first. If you have any specific queries on this or any other aspect of divorce, property or children issues or mediation please feel free to email sb@hmsolicitors.co.uk.

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