

Intervener Claims on Divorce – When Parents are involved with buying the first home

With housing prices rising, the cost-of-living crisis continuing to hit household budgets and mortgage products fluctuating almost daily, it is unsurprising that younger married couples are relying on their family for financial support when buying their first home.

The Bank of Mum and Dad is reported to account for approximately 20% of all financial transactions in residential property purchases, and nearly 50 % of all first-time buyer deposits.

However, problems can arise if the couple subsequently separate and one of them disputes the intention behind the money provided by a parent for the original house purchase. Specifically, when couples are in the process of unravelling their finances during divorce proceedings, the situation can become protracted and complicated when one of the separating couple's parents allege they have an interest in the ownership of the matrimonial home and the money contributed was only a loan – where the other claims it was a gift – and they want to 'ringfence' that contribution.

If the separating couple cannot agree what the outcome should be, then the parents may need to be joined to the financial remedy (divorce) proceedings as an 'intervener' so that the court can adjudicate on the nature and extent of that interest.

The Matrimonial Causes Act 1973 states that where a third-party (eg parents who have lent money) has a beneficial interest in any property or in the proceeds of sale of a property, the court will give the opportunity to that party to make representations to the Court. It must be at the earliest opportunity and only if the court deems it 'desirable' to add the party to resolve the dispute. As a result, the court has the power to determine not only the rights and interests of separating spouses in a property but also the right and interest held by third party parents.

In the first instance, the court must determine the extent of any third-party interest in the property before moving forward with the wider financial remedy case. A Judge cannot reasonably make decisions regarding the division of the matrimonial pot until the size of the pot has been determined.

This will mean that the parents' issue will be resolved as a 'preliminary' issue before the court establishes the final matrimonial split. This will involve separate witness statements from the parties and the case will be fully pleaded by points of claim and points of defence. This can of course be an expensive process, particularly if the parents are also supporting their child financially through the financial remedy proceedings as well. In some cases, the costs of joining in a third party may outweigh the actual amounts in dispute.

The ordinary rules that apply in family proceedings that each party bears their own costs, does not apply for an intervener claim. Instead, it is likely that the successful parties to the intervener dispute will have a cost order made in their favour (although this is unlikely to cover all the costs incurred), which could substantially reduce the overall matrimonial pot.

A sensible way of resolving these issues can be by using an out of court alternative such as mediation.

It is worth couples carefully considering entering into a pre-nuptial agreement before their marriage; this can be a useful tool in steering a Judge on the intention of the parties at the point when the money was originally gifted.

For advice about Family Law matters please contact Heather Weavill of Alison Fielden & Co (tel 01285 653261) (www.alisonfielden.co.uk)