

Personal Finance

Divorce: dividing up the family home

Property is the biggest asset for most couples, leading to no end of complications when they split

James Pickford SEPTEMBER 27 2019

When heading into a [divorce](#), it is wise not to underestimate the effect of a shifting housing market. A couple in Ascot put the family house on the market last year for £2.65m. The husband agreed with his soon-to-be-ex wife that she would buy a new home for herself for £1.5m.

The only problem, recalls Henry Pryor, an independent buying agent who was helping the couple find new homes, was that when their family home was eventually sold, it went not for £2.65m, but only £2m. “Were it not for the fact he had a very successful business, this wouldn’t have left him with enough to buy more than a potting shed in Ascot,” he says.

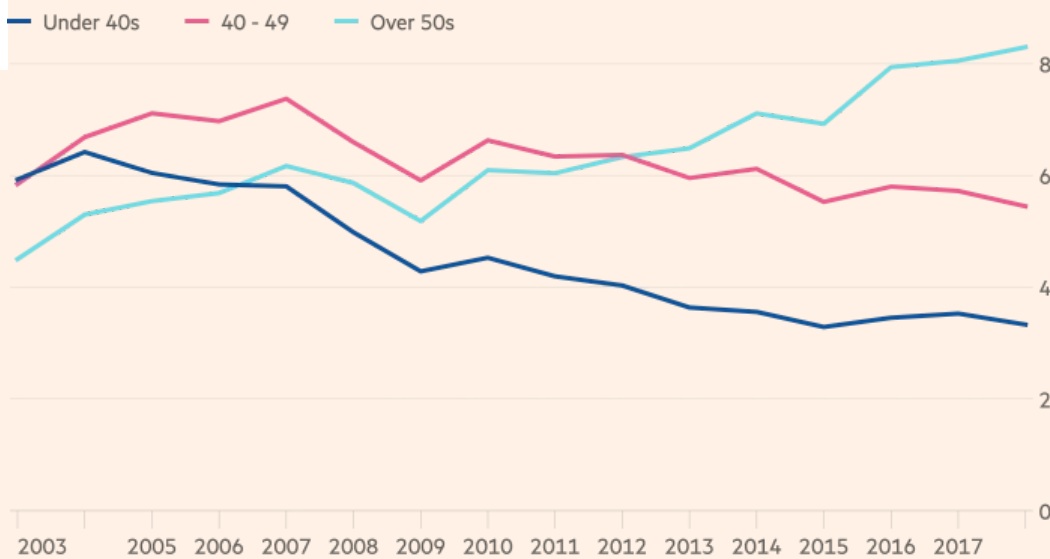
The storm of an [acrimonious](#) divorce can leave spouses with painful financial as well as emotional wreckage. It is a drama in which decisions about a family home, often laden with personal memories, can play a central role.

But the relationship between divorce and property is on the move. So-called “[silver splitters](#)” — over-60s choosing to part company — are on the rise while the divorce rate is ebbing among younger demographic groups.

The former are more likely to own property outright, the latter to be mortgaged. But the older generation, too, can face added complications when splitting, including the tension between providing for oneself after a divorce and handing on wealth and assets to the young. Drawing on research linking divorce and property, FT Money looks at how the pressure points are shifting when it comes to a marital break-up.

Over 50s now hold much more housing equity at divorce

Total value of housing equity held at divorce, by age of husband (£bn)



Source: Savills © FT

The price of a new life

The state of the housing market has long had an influence on the relative ease of a divorce. Today, when [house prices](#) in London and the Southeast have stalled since the Brexit vote — and dropped at the higher end of the market — well-heeled couples looking to sell up and buy two separate properties may need to a reality check on their lifestyle ambitions after a split.

David Dodgson, a financial planner at The Private Office, says: “In terms of property, asset prices are challenging at the moment. Some are sitting tight because they haven’t quite as big an asset price to share as they thought.” Some couples even extend the period they live together, he says, in the hope that house prices in their area will recover before they go their separate ways.

There is evidence, however, that divorcing couples will increasingly have a bigger pot of assets to juggle with when working out a fair split, by virtue of the shifting demographics of housing wealth. The average age at divorce is [rising](#): data from the Office for National Statistics show that divorce is climbing fastest among the over-60s. In 2018, there were 10,776 divorces in this age group — a 44 per cent increase on the number 15 years earlier.

At the same time, a big shift has taken place in the distribution of housing equity between the generations over the past decade and a half.

Lucian Cook, residential research director at Savills, the estate agency, has been looking at ONS data on the age of men who divorce against housing wealth at similar ages from the English Housing Survey.

He found the total housing equity held by over-50s on divorce rocketed from £4.5bn to £8.29bn over 15 years — a rise of 84 per cent. For the under-40s, the reverse applied — total housing equity of £6bn fell to £3.3bn, a drop of 43 per cent, from 2003 to 2018.

His analysis assumes that divorce is not unduly concentrated in couples living in different types of housing tenure.

Nevertheless, the accumulation of [housing equity](#) among older groups reflects their good fortune in living through the “golden age” of home ownership, when smaller deposits were required to get on the housing ladder and there were fewer regulatory constraints on mortgage lending such as loan-to-income ratios. Strong house price growth throughout their tenure meant the marital home became a big chunk of their total wealth over time, while couples would on average have married a little earlier than today, getting a head start on the gains from rising house prices.

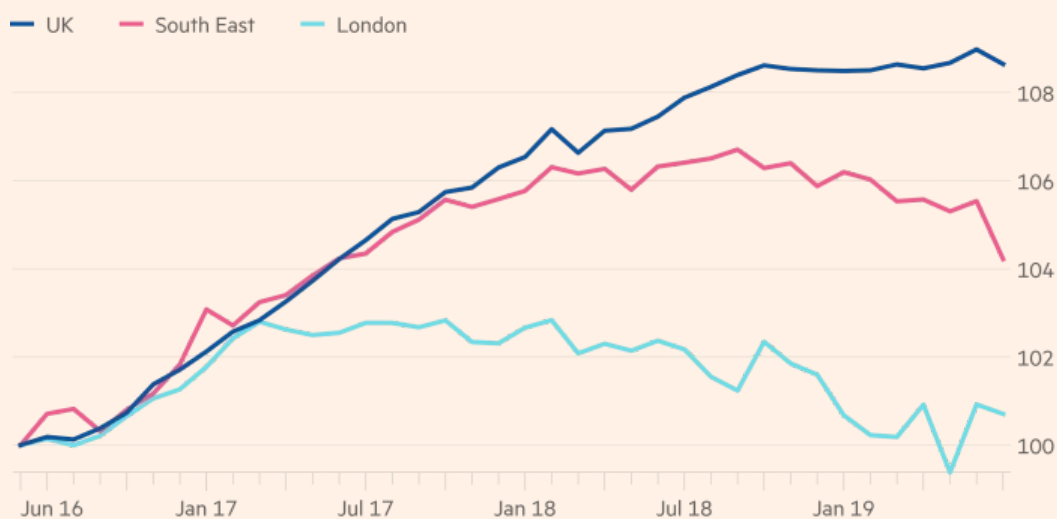
“That feeds through into the percentage of divorces with significant housing equity in those latter years,” Mr Cook says.

What does that mean for divorce? All things being equal, greater wealth can smooth the process of splitting. “Generally, ‘grey divorces’ can be easier to resolve because there’s more money and there are fewer issues over children,” says James Copson, a partner in the family team at law firm Withers. “If there’s more money around then one party doesn’t resent quite so much losing one portion of it, and the other party might be equally willing to accept less than their absolute strict entitlement.”

It is rare for one spouse to be able to buy out the other when it comes to a large family home, so selling up is the usual route (as estate agents wistfully point out, much of their business is driven by the “3Ds” of divorce, debt and death). However, the task of selling one home and expecting the proceeds to buy two can be a formidable challenge.

House prices in London and the South East have stalled since the referendum

Land Registry House price indices rebased, June 2016 = 100



Source: Refinitiv
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“Let’s say you’ve got a property in a nice part of London worth £5m,” says Mr Copson. “Divide it in two and £2.5m gets you nothing like what you had before.” With friends and other family in the neighbourhood, or work commitments nearby, many divorcees try to stay close to the area they have always lived in. This means any outsized gains from a sale are likely to be eaten up by commensurate rises in local prices.

Mr Pryor, who often bids on properties being sold by divorcing couples, says such sales can be expected to take longer as the parties negotiate the details of a split as well as figure out the shape of their new lives. But he says there are countervailing reasons why a resolution is usually guaranteed. “Frequently, the sums don’t add up in the way they’d hoped but they are at least motivated to get away from the shipwreck and as a result will be more pragmatic. Although it’s disappointing from a human point of view, from a commercial perspective divorce often creates opportunity.”

Because of the emotional turmoil of a split and the difficulty of finding the right place to live at an affordable price, he suggests that those selling up should rent for a period before they buy again — particularly given the high transaction costs racked up by any subsequent move. “It’s very easy to make the wrong and therefore expensive mistake on the rebound. It’s just as easy to end up with the wrong new house as with the next new partner.”

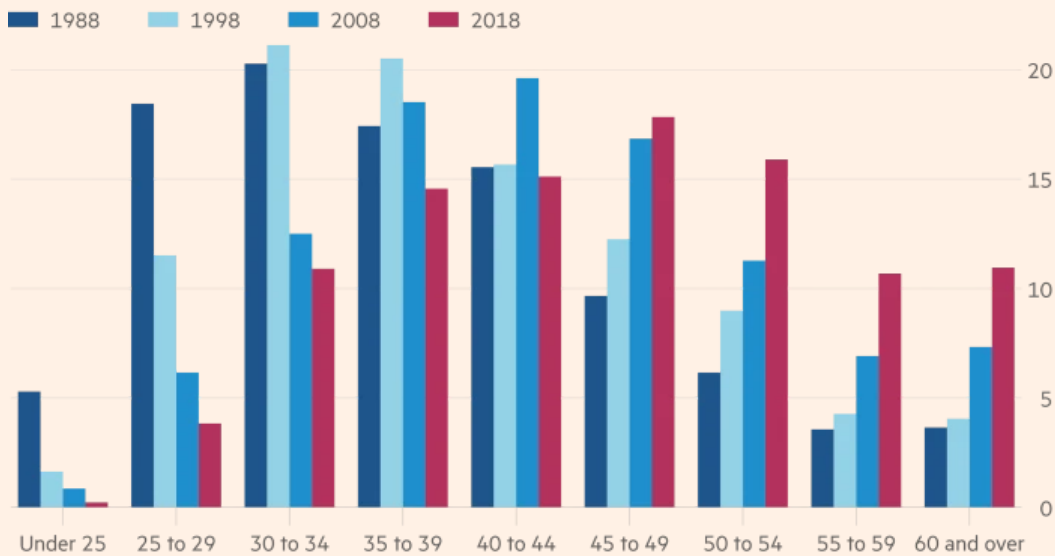
The Bomad complication

The relative wealth of couples in the “grey divorce” age group may help them move on after a split, but it can have substantial consequences for younger generations.

[Research](#) on the “Bank of Mum and Dad” by L&G, the UK insurer, suggests £6.3bn will be lent or gifted to children for housing costs in 2019. In an age when “Bomad” has become an important mechanism for [assisting children](#) or grandchildren to afford a first home (and increasingly a “second stepper” purchase), the use of housing equity and other assets to turn a single household into two in a divorce can constrain the availability of wealth to be handed down.

A rising share of divorcees are from older age groups

% of divorces, by age of husband



Source: ONS
© FT

In areas of high house prices this is likely to be a more serious handicap to aspiring buyers. The average deposit paid by first-time buyers in London during the first six months of 2019 was £147,000; and £72,000 in the Southeast, Savills said. The average income earned by first-time buyer households in those regions was £80,000 and £58,000 respectively.

“If their wealth has been split into two individual households then you’ll often find the ability of parents to get children on the housing ladder is going to be impaired,” says Mr Cook.

There can be strains over the terms of a loan where parents have already handed over cash to their loved ones for a property purchase and subsequently divorce, however reluctant they may be to open this can of worms. “The issue for those parents is — do they call in loans from their children to settle their own divorce,” says Mr Copson, who has encountered one client wishing to claw back the money.

“It puts parents in a difficult position,” says Vandana Chitroda, a family lawyer with RIAA Barker Gillette, who has also dealt with cases where Bomad loans caused problems. “They want to provide for their children, but in some situations they do have to look after their own needs.”

The status of Bomad money, of course, may also be disputed when children themselves divorce, as parents unhappy to see their cash disappear over the horizon with a departing spouse may decide to raise arguments over whether the deal was a gift or a loan requiring repayment.

The problem is that money handed over by parents is often not agreed as a formal loan, let alone sealed in a legal document or registered with Land Registry, since specifying it as such can reduce the borrowing simultaneously available to a child via a commercial mortgage lender. When house prices are on the edge of affordability, the distinction can make the difference between a successful purchase and failure. But the lack of legal clarity can create problems down the line.

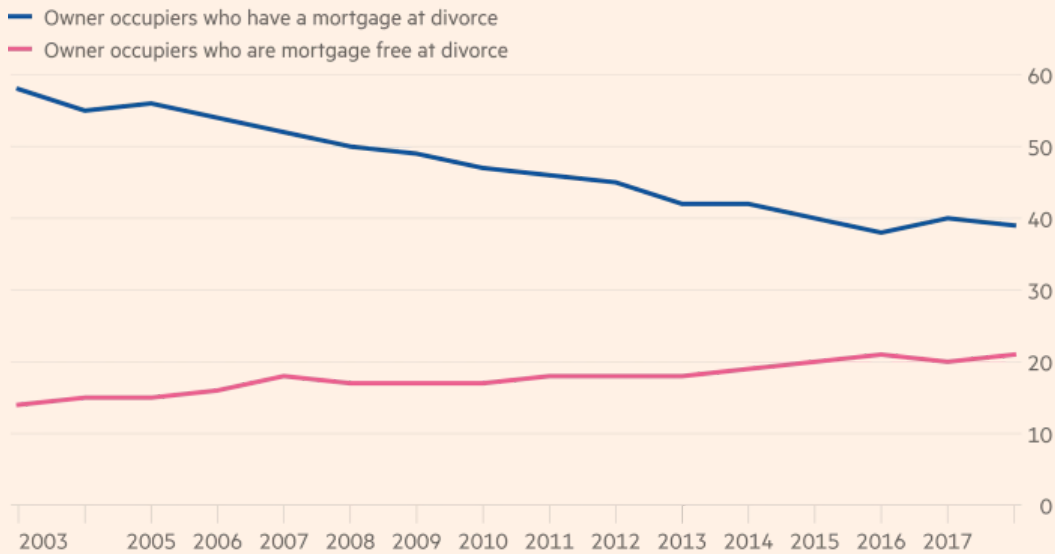
The timing of a divorce can generate difficulties of a more emotional nature. An older child among siblings might receive money from parents for a home purchase. If the parents then divorce, they can be left with nothing to offer another child for first-time buying. “That can cause problems within the family,” says Mr Copson, “because the second child can feel like a second-class citizen.”

If parents are expecting family courts to sort out Bomad issues upon a divorce, they are in for a rude awakening. Ms Chitroda says family courts typically decline to address questions of whether money given to children is a loan or a gift in divorce cases. “I have found that couples or clients find

it difficult to accept that putting aside money for children is no concern for the court. The court would say that's something you've got to sort out for yourself."

More divorcees are now mortgage free

% of all divorces



Source: Savills
© FT

Common lore

The long-term [decline](#) in marriage between opposite sex couples in England and Wales — under way since the early 1970s — comes hand in hand with a rise in cohabitation between couples. Just as the over-60s no longer feel the stigma associated with divorce that haunted previous generations, so young couples are happier than their forebears to buy a home together and start a family outside the institution of marriage.

However, advisers warn that the legal protections for married partners undergoing a divorce — in particular the assumption of a 50/50 split in assets accumulated since marriage — are not available to cohabiting couples. Ms Chitodra says a myth continues to circulate among some couples that “common law marriage” protects unmarried cohabiting partners upon a split. In fact, cohabitation can be disastrous for the economically weaker party if they separate.

Those who understand this are increasingly asking lawyers to draw up “cohabitation agreements”, specifying what can happen to shared assets such as the equity in a property, should the relationship come to an end. “We are seeing increasing numbers of cohabitation agreements between parties who want to live together. They do have legal weight,” says Mr Copson.

He has noticed a similar rise in the adoption of pre-nups, which were once the preserve of super-wealthy international clients. “Now you see British clients taking them up,” he says, adding that they are increasingly being used by those who are not currently wealthy but may be expecting to inherit in the future.

Legal certainty in divorce sale cases is desirable for Mr Pryor, the buying agent, but for different reasons. When bidding for a house being sold by a divorcing couple, he is far more careful to specify what his offer does and does not include. “In a divorce there is much more opportunity for someone to be aggrieved and therefore spiteful — and remove all the things you would have thought should ordinarily be included in a sale — anything from light fittings and radiator covers to curtains and fitted carpets. Every penny counts and it's easy for one person to score a cheap point by stripping a house of its bits and pieces because they're feeling hard done by.”

Mr Copson says issues that arise during a divorce are often simple proxies for the underlying conflict between the partners. “If there are issues over property, children, or whatever, it is not really that issue that is key,” he says. “It is some emotional difficulty between the couple.” In such cases, it is hard to avoid the conclusion that the house has turned from a roof over one’s head to a symbol of the failed relationship of its occupants.

Splitting a pension pot on divorce

Any pension earned since the start of a marriage is treated as another ingredient in the pot of assets to be divided when a couple splits. But a substantial pension accumulated by one partner may also create opportunities for trade-offs in divorce agreements: the economically stronger spouse may retain their pension pot in return for the other spouse keeping the house, for instance.

Pension freedoms introduced in 2015 have made it easier to include retirement savings in a divorce settlement, though advisers warn that those seeking to liberate a pension in its entirety should beware the tax constraints.

“Where you have a ‘grey’ divorce, you are looking increasingly at pension sharing as part of the overall equation,” says James Copson, a partner at law firm Withers.

When it comes to deciding how much a promised pension is worth compared with a property or other assets, changes in [gilt yields](#) have complicated that calculation for the “defined benefit” or final-salary pensions still to be found among the older generation of divorcees.

Transfer values — the “cash equivalent” value of a defined benefit arrangement — have been subject to swings as a result of shifts in gilt yields and other factors, so any assessment made at the start of the divorce process may have dropped at the moment the split is completed, leaving less money in the pot.

David Dodgson, financial planner at The Private Office, says: “It’s a little bit challenging at the moment to value defined benefit pensions. We’ve seen transfer values go up over 5-6 months but you’ve got moving sands there. You could find that by the end of negotiation that value is reduced, particularly with a protracted case.”

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