



LegalMatters

By John Hatrick, Tenerife Solicitors

Put the needs of your children first during if divorce is on the cards



ceedings.

Where children are involved, the Spanish Courts will usually permit the children to remain in the matrimonial home. Therefore the parent who has custody is also likely to be granted occupation of the matrimonial home in the short term.

It is a regrettable fact of divorce that once spouses decide to go their own way, children sometimes become embroiled in the dispute. Therefore it is advisable to agree contact and visiting, child maintenance and even custody as early as possible so that the children do not suffer. Ultimately both spouses should try to put the needs of their children first.

Who gets what?

Couples who are married in Spain will elect to do so under a specific economic

Divorce in Tenerife

Despite the sunshine and sangria, many British couples who move to Tenerife soon discover that the new environment, culture shock, lack of employment opportunities or absence of family and friends can put a strain on their relationship. Sadly, a large number of ex-pat couples end up separating as a result.

Divorce in Spain can be a complicated matter, particularly where there are children involved or where the parties have joint assets or a business. For any person who is familiar with divorce procedures in England, Wales or Scotland, the law applied to divorce in Spain for spouses who are both British nationals is essentially the same. This is because Spanish law applies the law of nationality to personal matters affecting the individual, such as wills and probate, family matters and divorce.

The Spanish judge will therefore apply the relevant British legal principles to the couple's divorce, albeit via the Spanish court procedures and bureaucracy. However, if the spouses are of differing nationalities, then the courts will usually apply Spanish law if they were living to-

gether in Spain immediately prior to separation.

Under English/Welsh law or under Scottish law, there are five grounds for divorce, namely:

- 1. Adultery** – The petitioner must find it intolerable to continue to live with the adulterer and must petition for divorce on this ground within six months of discovering the adultery.
- 2. Desertion** – One spouse has deserted the other for no good reason for at least two years.
- 3. Unreasonable behaviour** – Can one spouse reasonably expect to continue to live with the other after certain behaviour. Typical grounds cited are alcoholism, compulsive gambling, child abuse, domestic violence etc.
- 4. Two years separation** with consent to divorce (one year in Scotland).
- 5. Five years separation** without consent to divorce (two years in Scotland).

It is possible for one party to petition for divorce back in Britain. However, unless one of the parties has resumed residence in the UK following separation, it may be difficult to convince a judge that the UK is the correct place to commence pro-

matrimonial regime that they have chosen. The most common regime dictates that all assets held by each partner prior to the marriage remain the exclusive assets of that partner, whereas assets acquired during the course of the marriage are shared equally on divorce.

Where English or Scottish law is applied, the approach is more flexible. The judge has discretion to award assets to either party regardless of the length of the marriage. However, in reality this means that the judge will weight up a variety of factors including the needs of the children, the contribution of each party to the household and the ongoing financial needs and expectations of each spouse. Increasingly in Britain, the Courts are moving towards a 50/50 split, particularly in the case of long marriages.

Tenerife Solicitors can advise and assist British clients with divorce and family disputes in both Tenerife and in England & Wales.

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