

## **LIVING TOGETHER: What happens when the relationship breaks down?**

### **We can assist you in reaching a solution either by**

- **constructive negotiations**
- **collaborative law**
- **court proceedings**

As an unmarried couple living together you do not have the same rights as married couples, you are not entitled to inherit the estate on your partner's death, cannot claim maintenance or obtain pension orders for yourself if you split up and may not be entitled to a share in your home even after living in it for a considerable period of time. Unmarried fathers may not have rights for their own children.

### **Your home**

In the absence of agreement the court will need to determine the shares in which a property is held. Generally, if the property is held as joint tenants, you may have agreed to own the home in equal shares and therefore on separation an equal share in the property would be assumed unless you specified otherwise when the property was purchased. The house can be sold if you both agree and are jointly liable on the mortgage, so if your former partner doesn't meet the mortgage repayments, the mortgage lender may seek payment from you.

You may own the property as tenants in common in shares that you agreed at the time of purchase in a deed of trust. If no specification was made, you will need to apply to the court to determine the share in the equity you believe you are entitled to.

If you require a sale of the property and this cannot be agreed then an application to the court will be necessary.

If either you or your spouse own the property in your sole name there is a presumption that they own the property outright and in order to be entitled to a share you will need evidence of an agreement or contribution to the purchase price, to improvements or mortgage repayments and that your contribution was made in reliance on a promise that you would benefit.

If you jointly own a mortgaged property with your partner, you will be responsible for the mortgage repayments if your partner fails to make them.

If your home is rented by your partner, he/she can give you reasonable notice to leave your home. If you live there with dependant children, you may be in a position for the tenancy to be transferred to you. If you are joint tenants, you both remain entitled to occupy the property and are both liable for the full payment of rent for the term of the tenancy. This is a complex and technical area of law and urgent advice should be sought particularly if your home could be sold or remortgaged without your consent. If children are involved you should obtain advice as to how you may retain the property as a home for them during their minority.

An application can be made to the court under Schedule 1 of the Children Act 1989 for an order transferring an interest in the property for the benefit of a child. Early advice is also recommended where there are issues relating to who will live in the property.

## Your savings and other assets

Generally, each party will retain their own assets in the absence of a living together agreement.

## Your debts

You are responsible for debts in your sole name and for the full amount of debts in joint names. If a joint debt is not repaid by your ex-partner then you are liable for it in its entirety. It is unlikely that a lender will release you from any joint debts. You can request that credit agencies remove links between you and your former partner but they may refuse to do so.

## Death

If you are a dependant of the deceased and have lived together for at least 2 years prior to death, you may be entitled to apply to the court for provision from the estate if provision is not made for you by will. This can involve “fighting” the other beneficiaries of the estate for your share. There are no inheritance act exemptions available to cohabitants.

## Living Together Agreements

As there is no specific legislation protecting cohabitants it is advisable to obtain full legal advice when the relationship begins. Undoubtedly this may be a time when the relationship is viewed by both parties with rose-tinted spectacles and the prospect of the relationship floundering may not be on your agenda. However agreeing what would happen if it does could make your relationship stronger and provide you with the security of protection. Many cohabitants will have children and assets from this or previous relationships and the only way to provide certainty and protection for you and your loved ones is to enter into a living together agreement.

It is obviously preferable to consider these aspects at a time when your relationship is working, you are communicating and trust each other, than when the relationship ends and negative emotions run high.

The living together agreement can be used by cohabitants who decide not to marry or enter into a civil partnership to clearly define the extent of your commitments and obligations to each other in the event of separation or death.

The agreement carries more weight if you individually seek legal advice and enter into a formal agreement with full and frank disclosure. The agreement can include the following aspects

- how property was purchased, the extent of contributions made by both parties and how it will be divided on relationship breakdown
- the extent of all assets and debts, how they have been accumulated and who is responsible for debt repayments
- intentions on inheritance (this does not replace a will)
- the contents of the property and how they will be divided on separation
- what arrangements will be made for the children
- when the agreement should be reviewed and its duration

## **Child support**

This is payable by the non-resident parent of biological or adopted children whether or not you are married. You may be able to reach an agreement about voluntary child support, but if not an application can be made to the Child Support Agency. The website [www.csa.gov.uk](http://www.csa.gov.uk) can assist you in calculating the amount of child support payable.

## **Other options to protect your children**

Applications can be made to the court to transfer property and tenancies to you for the benefit of children during their minority under Schedule 1 Children Act 1989. In addition, you may be able to apply for income or a capital sum for the benefit of the child. In high net worth cases, these claims can be substantial.

## **Rights regarding the children**

Unmarried fathers only have parental responsibility for a child if registered as the father on birth certificates for children born on 1st December 2003 or after. They can acquire parental responsibility by subsequently marrying the child's mother. A father without parental responsibility can acquire it by entering into a parental responsibility agreement with the mother or applying to the court for a parental responsibility order in the absence of the mother's consent.