

Information Sheet

Living Together Guide

The popular misconception is that couples who live together automatically acquire rights as “common law husband and wife”. This is not the case. This fact sheet provides a brief insight into issues commonly encountered by unmarried cohabitants in respect of property and money.

Property

The mere fact of cohabitation does not mean a person acquires property rights. Ownership is determined in accordance with property and trust law.

Where a property is co-owned by two or more persons, it is also important to see if there is any specific written declaration, perhaps in a document called a “Declaration of Trust” or in the transfer document itself setting out specific interests.

A declaration of trust will determine how the parties’ share the equity (which we lawyers also term the “beneficial interest”). The equity could be held equally or unequally if the parties have contributed in unequal shares to the purchase price. A declaration of trust is normally conclusive evidence of beneficial ownership.

Where the legal title is held jointly, there is a rebuttable presumption in law that the beneficial interest is also owned equally.

Where the property is owned by one alone, it is necessary for the other party to prove an intention to share ownership. In the absence of an express agreement, a common intention can be inferred where, for example, a party has acted to his or her detriment by payment of the mortgage. Once a common intention is inferred from direct contributions, the Court can look at the whole “course of dealings” between the parties during the relationship to determine what is fair. This may include individual contributions towards household outgoings. Where there is evidence of an intention to share ownership the law may impose what is known as a “Constructive Trust” to give effect to the agreement to share ownership. This is a difficult area of law where careful legal advice should always be sought.

A declaration of trust is highly recommended for unmarried cohabitants intending to buy property together. This will avoid many of the pitfalls and difficulty in trying to establish the basis for any claim in respect of property when the relationship breaks down.

Where one party is bringing property into the relationship which will constitute the family home, a cohabitation agreement, to regulate the position with regard to the property and what each party can expect during and after the relationship, should be carefully considered.

Financial Claims

Unlike married couples, cohabiting couples have no duty to maintain each other.

However, they do have a legal duty to maintain their children.

If it is not possible for parents to reach an agreement regarding child maintenance then generally it will be for the Child Support Agency [CSA] to assess child support. The CSA has exclusive jurisdiction except in certain circumstances where the courts can still make maintenance orders for the benefit of children.

The CSA has jurisdiction where the child is under 16 or under 19 but in full time non-advanced education; and both parents are resident in the UK. The majority of cases will fall to be dealt with by the CSA.

There is presently a law going through parliament to replace the CSA with C-MEC [Child Maintenance and Enforcement Commission] and to re vamp the system. These changes are unlikely to take effect for a number of years.

In the meantime, the Court can still make orders for lump sum payments, settlements and transfers of property. It also has jurisdiction in cases involving step-parents, where “topping-up” of CSA maintenance is sought in those cases where the non resident parent’s earnings are large and exceed the prescribed ceiling. It can also deal with disputes over payment of school fees and education expenses for children going into further education, as well as cases where the child of the family has a disability.

For further details or advice contact the family law team at Howell Jones.