

Separation of Unmarried Couples and Property Rights

Separation

Couples who have not married are in a very different situation to those who have. Unlike divorce, there is no formal procedure to end the relationship and unmarried couples do not have the same rights to make financial claims against each other as married couples.

Couples can consider a **Deed of Separation**. This is a voluntary document which records all areas of agreement on children and finances and provides for no further claims against each other. For such a Deed to form a binding contract between you and your partner, you both must take separate legal advice and have given full disclosure of income and capital.

Children Issues

If you have children together, you may be able to make claims on their behalf under the Children Act for income, capital or property. This may allow you to remain in the family home, although any order providing a home for the children will only usually last until they reach 18 years.

Unlike married couples, cohabittees have no potential ongoing claim for maintenance against each other. However, if you have children, the parent who does not have the children living with them is expected to contribute towards their maintenance. If you cannot agree a figure for child maintenance, you will need to apply to the Child Maintenance Service for an assessment.

If you cannot agree on arrangements for the children, you may have to apply for a Child Arrangements Order to decide who the children are to live with and/or how often the other party will have contact with the children. Please see our leaflet on **Children Issues** on our website for more details.

Property owned by unmarried couples

When unmarried couples separate there can often be disputes regarding the ownership and sale of jointly held property. Contrary to common understanding, English law has no concept of common law partners and the same rules apply whether co-owners are unmarried partners, business associates or friends.

If your relationship breaks down we can advise you on your rights regarding any joint property. We will assist you in considering the options to recover your assets or keep a roof over your head; avoiding acrimony where possible and seeking a speedy resolution.

This leaflet primarily concerns jointly owned property, however, you may have property rights even where you do not formally own the property.

“Disputes between unmarried cohabiting couples are still governed by the ordinary law.

These disputes have become increasingly visible in recent years as more and more couples live together without marrying”

Baroness Hale in *Stack v Dowden*

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Property Rights

Who is entitled to live in the property?

Unless otherwise agreed, both owners are equally entitled to live the property and invite guests. Despite this, where there has been violence or the threat of violence it is not always sensible to exercise this right.

An owner who has been unfairly excluded from their home, may have the right to seek an **Occupation Rent** from their co-owner.

Who has to pay the mortgage?

Both owners are liable to the mortgage lender to pay the full amount of the mortgage outstanding. If the mortgage is not settled in full, both owners risk the threat of repossession, costs and a bad credit rating which may cause difficulties in seeking a new mortgage.

If one owner is not paying their share of the mortgage, the other owner may have the right to seek a fair contribution. This is often set off against a claim for an **Occupation Rent**.

On sale, how the proceeds are divided

“I ask in despair how often this court has to remind conveyancers that they would save their clients a great deal of later difficulty if only they would sit the purchasers down, explain the difference between a joint tenancy and a tenancy in common, ascertain what they want and then expressly declare in the conveyance or transfer how the beneficial interest is to be held because that will be conclusive and save all argument.”

Lord Justice Mummery in *Carlton v Goodman*

This simple question is often the root cause of many disagreements. Upon purchasing the property the owners’ conveyancer should have recorded in what percentages and how the property is owned.

Co-owned property in England and Wales can either be held as **joint tenants** or **tenants in common**. For these purposes, the word ‘tenancy’ simply means ownership. Please see the glossary on page 3 for a further explanation .

Express Declaration on Purchase

Most purchasers will sign a Land Registry Transfer Form (form TR1) when buying a property. This contains a declaration of how the property is owned and in what share. Alternatively the owners’ conveyancer may have drafted a trust deed setting out how the property is owned.

If the parties have declared upon purchase how they own the property this is conclusive unless set aside by the court. There are only limited grounds for this to be set aside, for example through undue influence or fraud.

No Express Declaration

Where a family home is purchased in joint names but without any declaration of how they are to hold the property, there is a presumption that this is held as **joint tenants** and therefore the couple own the property equally.

This presumption can be rebutted where it was the couple’s common intention that the property would be owned in different shares, either when the property was purchased or later. In these circumstances the court will determine the parties’ shares on the basis of what is fair having regard to the whole course of dealing between them.

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Compelling the sale of the property or buying your partner out

The starting point is either owner is entitled to have the property sold to release their share of the equity and have the mortgage repaid. Alternatively one party may buy the other out and have the property remortgaged.

Disagreements may arise over what price the property should be marketed at, whether an offer should be accepted or how the sale proceeds are to be distributed. Sales can be delayed for vulnerable parties and, as referred to above, children in particular have further rights. In certain circumstances, the owners might have signed a trust deed which sets out how the property is to be sold.

Should it not be possible to reach agreement amicably, the court will determine how and when the property is to be sold. While it is preferable to reach agreement amicably, sometimes only the involvement of the court will enable a sale to proceed.

Other Assets

While most disagreements concern the family home, we also advise regarding other shared assets and debts such as joint loans, cars and pets.

Actions against Conveyancers

Disputes between co-owners often arise because the documentation completed on purchase does not reflect the parties' true intention. In appropriate cases we can advise whether you have any claim against your conveyancer.

Glossary

Joint Tenants

- Each owner has an indivisible share in the property and all owners are equally entitled to the whole property.
- Upon death of one owner, the remaining owner(s) automatically inherit irrespective of their Will.
- Upon sale where there are 2 owners, both will be entitled to 50% of the sale proceeds.
- It is possible for owners to sever the joint tenancy and become tenants in common, but not the other way round. It is usually advisable for separating couples to sever any joint tenancy.

Tenants in Common

- Each owner has a distinct percentage share in the property. It is advisable for co-owners to indicate expressly upon purchase the proportions in which they hold the property rather than leaving this to be implied from the circumstances or the financial contributions of each owner.
- Upon death, an owner's share will pass according to their Will or intestacy.

Occupation Rent

If an owner is excluded from the property they may in certain circumstances have the right to seek payment from their co-owner. This is typically 50% of the rental value of the property.

This does not apply where children of the relationship are housed in the property, as the excluded partner retains an obligation to provide housing for their children.

For more advice on **property rights** contact Matthew Knight or Sarah Oakley on 01722 410664 sarah.oakley@sampsoncoward.co.uk or matthew.knight@sampsoncoward.co.uk

For more advice on **separation, maintenance and children issues** contact Lin Cumberlin, Sarah Wood-Heath or Tina Coward on 01722 410664 or lin.cumberlin@sampsoncoward.co.uk, sarah.wood-heath@sampsoncoward.co.uk or tina.coward@sampsoncoward.co.uk