

Living Together

A guide to finances and children when breaking up

There is a popular myth that couples who live together for a period of time, without getting married, acquire legal rights in relation to each other, similar to those of a married couple. The phrase “common law husband or wife”, is often used in this context. In reality, this status has no legal basis and on the breakdown of a relationship, the parties have little or no rights or remedies. Unravelling the financial arrangements at the end of a relationship can be complicated and it is important to seek legal advice.

Property

Living together does not automatically mean you have a right to a share of the value of the property or even a right to live there, once the relationship has ended.

Owned Property

Jointly owned property – if the couple own the property jointly, have funded the deposit jointly, have a joint mortgage, then this can help to protect each partner’s rights. Issues can arise:

- if for example one party paid the deposit and there is no written agreement to support an unequal share in the property. In the absence of documentation to say otherwise, jointly owned property is assumed to be owned in equal shares
- in the event there is a joint mortgage, both parties are still responsible for paying the mortgage, even if one party has left, unless the Lender consents to a release
- as the property cannot be sold without both agreeing to a sale or one party obtaining a Court order

One party owns the property - if only one of the partners owns the property, then the property owner:

- is the only person entitled to live there and can ask the other person to leave
- can sell the property without notifying the other party
- will be entitled to all the proceeds if the property is sold

In certain situations, the non-owning party may be able to establish that they have rights if:

- there is a written agreement to say otherwise
- the non-owner has contributed financially for example, paid the mortgage
- there are children and the Court orders it is best for them to remain in the home with the non-owner
- the non-owner has acted in a certain way, for example carried out renovations in the belief that they own a share of the property

Rented Property

Jointly rented property - if both names are on the rental agreement, then both parties have the right to live in the property and both are responsible for the rent. This applies even if one party has moved out. Issues can arise if:

- one of the tenants does not pay the rent, leaving the other to pay the full amount
- neither party wishes to leave
- both wish to leave, but the rental agreement has a time left to run

One person is the named tenant – if only one person is the named tenant, then it is only that person who has the right to live there. They are solely responsible for paying the rent. This means that the named tenant can:

- ask the other party to leave
- give up the tenancy even if the other person wants to stay. In this case it may be possible to agree a new rental agreement with the landlord

Possessions

The general rule is:

- whoever owned the item before moving in together keeps it
- any item given by one person to the other as a gift, is treated as belonging to the person who received it, although there could be an argument whether or not something is a gift
- anything bought during the relationship jointly, from joint funds belongs to both
- if a person buys an item from their own money, it belongs to that person
- if one party receives an inheritance during the relationship, it belongs to them

Sometimes, particularly if it has been a long relationship, it can be difficult to remember who paid for what. In such cases, it can be best to try and agree the value of the items disputed and then divide these based roughly on their value.

Bank Accounts

If there are separate bank accounts, the money in these accounts belong to the person whose name is on the account.

If there is a joint account, the money belongs to both, and in the absence of an agreement to say otherwise, this is likely to be equally.

If the joint account is overdrawn, both parties are responsible for the overdraft. The Bank can claim the money from either of the parties even though the account is in joint names.

It is important to close any joint accounts on separation, to avoid one party withdrawing all the money or running up an overdraft, for which the other person could be responsible.

Debts

Usually, the person in whose name the debt is in, is responsible for payment. If a debt is in joint names, then the creditor can in most cases, claim the money from either or both parties. Credit cards can be a particular problem, if the account is in one person's name, but the other party is an authorised user. It is advisable to notify the credit card company that authority to use the card has been withdrawn.



Children

Parental Responsibility

When a cohabiting couple who have children, separate, it is important to try to reach an agreement regarding a child's care and financial support. Legally, a person only has a say in major decisions such as a child's education, if they have parental responsibility.

A person automatically has parental responsibility if they are:

- the child's mother
- the child's father **and** on the child's birth certificate (for a child born after December 2003)

It is possible to obtain parental responsibility by:

- signing a parental responsibility agreement with the mother
- obtaining a court order

Living Arrangements and Contact Arrangements

If agreement cannot be reached about where a child should live, then the Court will decide based on what is best for the child.

Financial Obligations

Both parents have a responsibility to support a child, whether or not they have parental responsibility. If the parents cannot come to an agreement, then the Child Maintenance Service can be asked to make an assessment.

Step Children

Different rules apply to step-children. As the person is not the natural parent, they will not automatically have parental responsibility. A step-parent will not normally have financial obligations to a step-child. Whether or not they keep in contact with the child, will largely depend on what is best for the child.

How to Avoid Problems

Cohabitation/ Living Together Agreement

A properly drafted Cohabitation Agreement, which is sometimes called a Living Together Agreement can avoid problems and issues arising if the relationship breaks down. Whilst an agreement cannot encompass every eventually, it can reduce the number of contentious areas. An agreement will set out the couple's intentions with regard to their finances, the property, possessions and their children in the event that they separate. For the agreement to be enforceable it should be drafted by a specialist lawyer.

A Will

If a person dies without making a Will, then the law decides who should inherit. A cohabitee is not included in this list. This means that without a Will, a cohabitee will not receive any part of their partner's money, possession, or house, unless these were jointly owned. In some cases a cohabitee could challenge this position by bringing a claim under the Inheritance (Provision for Family and Dependents Act 1975) although such actions can be costly and lengthy without any guarantee of success. By making a Will setting out who is to benefit, will avoid unnecessary legal wrangles.

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