



Separation for Unmarried Couples

Contrary to popular belief, the concept of "common law marriage" does not exist in English law. Living together as a couple does not give rise to any automatic rights to make financial claims if the relationship breaks down, regardless of the length of the relationship.

The rights of cohabitants or unmarried partners on the breakdown of their relationship are therefore much more limited than those of married couples and civil partners.

There are some circumstances in which unmarried couples can pursue financial claims against each other. Most of the law governing unmarried couples and their assets is governed by strict principles established under property and trust law, but there are more flexible powers to pursue financial claims where a couple have children together.

The majority of separating couples resolve issues without using the court system, either by a process of negotiation (with legal help in the background) or through mediation.

This briefing provides information about the legal basis for those negotiations, and the claims that can be made in respect of:

- (a) property
- (b) Personal belongings
- (c) Maintenance for each other
- (d) Financial orders on behalf of children
- (e) Maintenance for children

There is a brief section about how the law may change in future following the recommendations made by the Law Commission in their report published in July 2007.

1 Claims against Property

The law on this issue is complex, and specialist advice should be sought. This section assumes that there are no children, as different considerations may apply if there are.

If a property is held in the name of one partner, there is no automatic right for the other to claim an interest in that property if the relationship breaks down, even if it has been their home for many years.

A claim may however be possible if:

- (i) promises have been made to provide a home or an interest in it, whether in a document or verbally;
- (ii) the non-owning partner has made a contribution to the value of the property, such as by contributions to the mortgage or repairs, or by contributions in the form of labour;
- (iii) a property owner has acted in such a way that it is clear that he/she intended to share the value in the property with the other.

For jointly owned properties it is normally presumed that the property is owned in equal shares unless there is evidence in the form of a Declaration of Trust that it is owned in different proportions. In some circumstances it may be possible to claim an interest in the property to the extent of an individual's contributions to the purchase price, or to pursue similar arguments to those listed at (i) to (iii) above to claim a greater share in a property.

If a property is jointly owned then it is possible for either partner to apply to the court for an order that the property should be sold. The application is made under the Trusts of Land and Appointment of Trustees Act 1996. The court will take into account the purpose for which the property is held. If the court finds that the property is still needed as a family home it may, in certain circumstances, delay a sale. It may be open to either partner to buy out the other's interest.

2 Personal Belongings

Each partner will retain ownership of items which he or she bought, or brought into the relationship, unless

- (i) it was a gift to the other partner or
- (ii) the couple intended to own the item jointly.

3 Claiming Maintenance

Under current law it is not possible to claim maintenance from a former partner. Maintenance claims may be possible if there are dependent children.

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4 Financial Orders on Behalf of Children

An unmarried parent may be able to apply on behalf of a child for financial orders against the other parent, when the parents separate. Maintenance out of income is dealt with at (e) below. In addition to maintenance, under Schedule 1 Children Act the court has wide powers to make various orders such as:

- (i) payment of a cash sum to meet one-off expenses
- (ii) payment of school fees
- (iii) capital for the provision of a home for a child, though, the property will usually revert back to the parent who originally held it when the child completes full time education.

5 Maintenance for Children

The parent with the care of a child is entitled to claim child support from the other parent.

Maintenance for children is primarily dealt with through the Child Maintenance and Enforcement Commission (formerly the Child Support Agency). The non-resident parent will generally be required to pay 15% of net income for one child, 20% for two and 25% where there are three or more children to support. There are however potentially significant reductions depending upon the number of nights the child spends with the paying parent, or where the paying parent has other dependent children.

The way in which child maintenance will be calculated is expected to change and will from 2010 be calculated on gross income rather

than net income (albeit on different percentages). This may therefore have a material affect on the amount of maintenance payable in future.

Where the other parent has an income above £104,000 net a year, the parent with care of the child can apply for enhanced income under Schedule 1 Children Act, and in these circumstances much more generous maintenance provision can be sought, including maintenance to cover the costs of the person who cares for the child.

Proposals for Reform

In July 2007, the Law Commission recommended that the law should be changed to provide clarification and enhanced rights for cohabitants particularly if they have children or if, in certain circumstances, they can show they have suffered 'economic disadvantage' as a result of the breakdown of the relationship.

The Law Commission recommended that if a couple have children or have lived together for at least 2 years and a claimant can show an economic disadvantage, there can be a claim against a former partner for compensation. Claims would not be as generous as for divorcing couples.

The Government has indicated that it wishes to review developments in Scotland, where similar legislation was introduced in May 2006, before it formally responds to the recommendations.

Meanwhile Lord Lester QC introduced a Private Member's Bill in December 2008 to give similar protection to cohabitants. It is not yet known whether that Bill will become law.

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