

## Separation for Unmarried Couples

Contrary to common belief, the concept of “common law marriage” is not recognised in English law, and in particular, additional rights are not acquired the longer a relationship lasts. The rights of unmarried partners upon the breakdown of their relationship are therefore very different from those of separating spouses. The law in respect of same sex relationships will shortly change under the Civil Partnership Act 2004.

The law governing unmarried cohabitants and the separation of their property is governed by property law, and is quite different from the law relating to married couples.

This brief introduction provides background information on:

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

### (a) Interests in Property

The law on this issue is complex, and specialist advice should be sought. If the property is jointly owned then it is possible for either partner to apply to the court for an order that the property 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.

If the property is held in the name of one partner only then it is presumed that all the equity in the property is owned by that person. However, that can be disproved if a Declaration of Trust was made at the time the property was purchased, and this then determines how the equity in the property will be divided upon a sale.

If no declaration as to the ownership was made then it will be presumed that each owner has an interest in the property to the extent of their contribution to the purchase price. It may be open to either partner to buy out the other’s interest.

It is also possible in certain circumstances to show that the non-property owning partner has an interest in it even where

no formal trust document has been drawn up. This can be demonstrated by proving that the couple had agreed to share the property, or the couple may be shown to have acted in such a way that it is clear that they intended to share the equity. For example, contributions to the purchase price or contributions by labour (such as building an extension) might demonstrate an intention that the property was intended to be jointly owned.

### (b) Personal Belongings

Usually unmarried partners will retain ownership of items they brought into the relationship unless it was a gift to the other partner or unless the couple intended to own the item jointly.

### (c) Maintenance for Each Other

After division of property has taken place, the couple are free to separate without having to make provision for the maintenance of the other. Under current law, in the event of relationship breakdown, cohabitants cannot claim maintenance from each other for themselves as a married couple are able to.

### (d) Financial Orders on Behalf of Children

An unmarried parent can apply on behalf of their child for financial orders against the other parent. The court can for instance order a parent to pay a lump sum to the other parent or to transfer a property to the parent with care for the benefit of the child. The property will usually revert to the parent who originally held it upon the child reaching the age of 18.

### (e) 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 largely dealt with through the Child Support Agency. The non-resident parent will generally be required to pay a set 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 for the number of nights the child spends with the paying parent.

School fees and provision for children in further education are still dealt with outside the CSA, and can be ordered by the court.

For further information please contact:-

**Catherine Hallam**

Partner

Tel: 0117 939 2000

Email: [catherine.hallam@burges-salmon.com](mailto:catherine.hallam@burges-salmon.com)

**Ashley Palminteri**

Associate

Tel: 0117 902 7761

Email: [ashley.palminteri@burges-salmon.com](mailto:ashley.palminteri@burges-salmon.com)

**Sarah Woodsford**

Solicitor

Tel: 0117 939 2000

Email: [sarah.woodsford@burges-salmon.com](mailto:sarah.woodsford@burges-salmon.com)

**Thomas Boyce**

Solicitor

Tel: 0117 939 2000

Email: [thomas.boyce@burges-salmon.com](mailto:thomas.boyce@burges-salmon.com)