

Busbys Solicitors

Pitfalls for Unmarried Partners

Legally, there are big differences between living with your partner and being married to them. Living together does not give you legal rights over each other, or legal duties and responsibilities to each other. The terms “common law husband or wife” or “common law marriage” have no meaning when it comes to legal rights in England and Wales.

If you separate, it can be harder to sort out your affairs if you are not married, particularly if you have money and assets (a house for example) that you share. Splitting up might leave you in a difficult situation because, for example, you can't claim maintenance from your partner, however long you have lived together.

Another important difference is that, if one of you dies, the other has no automatic right to inherit their property, as you would if you were married.

Buying a home together

If you want to buy a home together, there are broadly two ways you can share the ownership...

- “joint tenancy” which means you each hold an equal half share in the home but, as long as the joint tenancy exists, neither of you can take the other person's share. When one of you dies your share in the property will pass automatically to the surviving co-owner
- “tenancy in common” which means you hold the property in separate shares and you can state how much you each hold when you buy the property – it doesn't have to be equal. When one of you dies, your share will not pass automatically to the surviving co-owner, but will fall to be dealt with under your Will. If you do not have a Will then the law says what should happen to your share in the property using what is known as “the intestacy rules”. The solicitor you use

when buying a home should be able to explain the differences in detail, to make sure you get the arrangement that best suits your needs.

Splitting up

If you are thinking about splitting up, it's a good idea to get some advice from a solicitor who specialises in family and relationship matters such as our Mr John Busby. He will be able to tell you where you stand and help you work out your options. You might decide after a first meeting with a solicitor that you can sort things out yourself, but at least you will do this knowing about your legal position.

Acquiring rights

Living in your partner's home does not give you any automatic rights. So, if your partner wants to sell it, you may not be able to stop them, or to stay living there. However, if your partner has agreed to share the ownership with you, you should have a say in what happens. If this agreement was only spoken and not in writing, you are in a difficult position and you will need legal advice. If you have something written down, you are in a much stronger position. Your position is also stronger if you contribute to the home by helping to pay for it or by doing work on it. This is complicated, and if your partner is trying to sell the home or make you leave you should seek advice from a family solicitor who has experience in this area.

Paying the bills

While you are living together, you can of course decide between you who will pay for what. But, you should be aware of your responsibilities if your relationship breaks down, or your partner leaves. The law says that if you take on a debt (for example a mortgage or a loan) jointly, then you will be "jointly and severally liable" for it. This means that if one of you does not pay your share, the other can be made to pay the whole lot. If one of you stays living in the home after you separate, then that person would normally pay the mortgage and other bills to do with the home. In a similar way, you may also have to pay for all the utility bills, such as gas and electricity bills, if your

partner does not pay their share. However, if a loan or debt is in your partner's name only, you cannot be made to pay it if he or she does not.

Belongings and contents

If you are splitting up, you need to agree with your partner who will keep what. If you can't do this between you, it is worth trying mediation. In mediation, an independent person (known as the mediator) will help you to try and find a solution that you are both happy with. If you cannot come to an agreement, then legally who owns each item depends on who paid for it, or whether you each paid a part of it, or whether it was paid for out of joint money.

Obviously, in many cases, unless you can agree about the things you own jointly, you may have an expensive legal battle that could cost far more than the things themselves are worth.

Legal remedies

It is often far better to be wise before the event rather than seeking to enforce your rights after separation. It is still rather unusual in this country to see a cohabitation agreement in fore. Such a document spells out each partner's individual rights, duties and responsibilities to one another and to the property they occupy.

Separation agreements are also relatively little used. They define who gets what on separation and each partner signs up to a legally binding document. Separating spouses do not have the same access to legal rights as divorcing couples. There is no automatic entitlement, for example, to a share of property if your name is not on the deeds. A divorcing partner can ask the Court to adjust property rights in the interests of fairness. An unmarried partner will have to establish a right using trust and property law, where strict rules will apply rather than the wider discretion given to judges in divorce cases.

Many will argue that unmarried couples should get a far greater degree of protection in the Courts than they get now. Legislation has been promised in the future - but until it is in place, you are in a difficult position.

Where can I get help and advice?

For most people, the first step is to speak to a solicitor. Busbys are here to help. If you require any advice from us please do not hesitate to contact us. We are recognised by the Law Society for our legal excellence with the Lexcel award. You can have confidence in us. Call us **on 01288 35 9000**.

**Sharon Piper, Trust and Estate Practitioner
Busbys Solicitors
Bude & Holsworthy**