

# Services to Individuals

## Divorce and Family Law

### Cohabitation:

#### What happens when your relationship breaks down but you are not married?

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If you have been living with someone and your relationship ends when you are not legally married or you have not formed a civil partnership, you do not have as many legal rights as you might expect.

This information sheet will help you to understand the law in relation to cohabitation and the key areas you need to consider if you are affected by it. We understand that this can be an emotional and distressing time, so we will be alongside you to help you understand your options.

#### Common Law Partner - the myth

Although many people refer to couples who have been living together for a long time as 'Common Law' partners, no such legal status actually exists.

When couples are married or have entered into a civil partnership and the relationship ends, both parties have legal rights and the courts can make decisions relating to financial arrangements. However when a heterosexual, gay or lesbian couple are living together (cohabiting) and the relationship breaks down - the law cannot, for example, order one partner to pay maintenance to the other.

What you are entitled to depends on the financial contributions you have made to your property, savings, insurance and general purchases during the years in which you have lived together, and whether you can prove it; and also in some cases what has been agreed between you.

#### What happens to the house we have recently shared?

If your property is jointly owned, and the legal title is in both your names, it can be straightforward to receive your share. If this is not the case there may still be steps you can take. We will talk you through your options.

#### What happens if there are children involved?

Your responsibilities to your children still apply to you both even after the relationship ends. Wherever possible, it is always best to try and reach decisions about your children's living arrangements and maintenance payments together - without getting the courts or the Child Support Agency involved. Remember, you are the ones that know what is best for your children.

#### What if we are unable to agree on arrangements for our children?

If you cannot agree on arrangements for your children, the court does have the power to make orders relating to their care. They can decide with whom a child is to live, as well as decide on contact orders (visitation rights to the non-resident parent). To make a decision about an order, a Judge will usually ask the Children and Family Court Advisory Support Service (CAFCASS) to speak to both parents and the child/children involved, and report to the court on their behalf.

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### What about maintenance payments for our children?

Both of you are responsible for your children financially, even if you are no longer living together. If you are unable to agree on a maintenance payment between yourselves, the Child Support Agency will become involved. As well as maintenance, it may be possible to be awarded a capital sum - to help you with the deposit for a new house or deal with the expenses of raising a child for example. We will advise you on the merits of such an application and how to go about it.

### How can Walker Smith Way help me?

We have years of experience dealing with cohabitation law. We can make the process as straightforward as possible, ensuring that emotional distress is minimised. We can arrange for financial decisions to be agreed between you and your partner and where appropriate sanctioned by the court as swiftly as possible.

### What can I do to protect myself in advance?

Cohabitation or living together agreements between partners **before they enter into sharing a home with one another** is a way of clarifying what they both want to happen financially if their relationship ends. It can also be useful evidence that there was a common intention to share the property.

- You will both need to appoint a different Solicitor as the agreement is a legal document
- Make it clear that you both want this agreement to be binding
- The agreement should only deal with financial and property matters
- If you have not made one already, now would be a good time to write a Will.

### Death of a partner - Inheritance

If one partner dies without leaving a Will, their estate will be distributed according to the law. The surviving partner will not automatically inherit unless the couple owned the property jointly - as joint tenants. Cohabiting couples need to make Wills if they wish to ensure that the other partner inherits. We can help you both do this.

### Time for a change?

The British Government has asked the Law Commission to look at the law regarding Cohabitation, and report back with recommendations on how it could be improved. However any new laws are unlikely to be in place until 2009 at the earliest.

### Common questions

*I have been living with my partner for over two years. Do I have the right to half of their property and savings?*

You only have a right to a share of the property if your name is on the title deeds of the property. You may not be entitled to half - it depends on how the property is legally held. If your name is not on the title deeds but you have been contributing financially, for example by paying the mortgage on a regular basis, you may be entitled to some financial settlement. You will have no legal right to a share of your partner's savings.

*Does my partner still have to pay maintenance for our two children, even though we are not married?*

Yes, both parents are responsible for the financial welfare of any children.

### Further information

Our expert Solicitors can guide you through this difficult area of the law. We can help you to understand your rights, protect your interests and decide the best way forward.

For further information, please contact the Divorce and Family Law team on Chester 01244 357400 or Wrexham 01978 340400.

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