

Unmarried Couples



Unmarried couples or a second family are now commonplace. Consequently this has resulted in additional legal problems which mirror the complexities of human relationships that exist today.

The purpose of this leaflet is to outline some of the legal pitfalls that can arise for the unmarried family and when you should seek legal advice from us.

Your Home and Contents

Unfortunately the law for unmarried couples does not provide the same protection as for married couples.

Examples of issues you need to consider are:

- 1 If you are buying together, what will happen if you do not remain a couple? When can you sell the property?
- 2 If you buy the home with the aid of an endowment policy, who will own the proceeds if you split up?
- 3 Legal rights can be created where, for example, the incoming partner contributes towards the mortgage or the cost of improvements. Is that what you intend?

We recommend you seek advice before you buy to clarify your intentions rather than potentially face long expensive battles through the courts.

Death

The effect of the death of a loved one is traumatic at the best of times. The absence of some provision for a partner either by Will or otherwise can be devastating.

In the absence of a valid Will, the rules of intestacy do not make provision for the surviving unmarried partner, except in very rare cases and at the discretion of the Court. A Court Order under the Inheritance (Provision for Family and Dependents) Act 1975 or the Inheritance and Trustees' Powers Act 2014 can be used by the surviving cohabitant to secure some provision from the deceased cohabitant's estate. These court applications are expensive and fraught with difficulties and success cannot be guaranteed. Time limits for an application are very strict. We highly recommend that unmarried couples make Wills so as to avoid these problems.

Do you pay
and have no say?

Did you know that your child's name can be changed without your consent if you are a father who does not have parental responsibility?

Children

All fathers have a legal duty to provide for their children. An unmarried father does not automatically have parental responsibility for his child. He can however gain parental responsibility by obtaining a Parental Responsibility Agreement (under the Children Act 1989) either with the consent of the mother or by Order of the Court. Also, since 1st December 2003 a father not married to the mother at the time of the child's birth has parental responsibility if his name is placed on the birth certificate at registration.

Guardianship

If a father does not have parental responsibility, he cannot appoint a guardian and he will not be able to look after the children after the mother's death. It is therefore important to make provision for this in your Will.

Tax

There are tax advantages given to married couples that are denied to others. We can advise on the tax planning opportunities for unmarried couples as these are complex, and professional advice is essential.



Bankruptcy

A cohabitant is not a "spouse", so in the event of bankruptcy with no spouse or child under 18 years, then the home can be sold immediately by the "Trustee in Bankruptcy". Even where there are children, the home can be sold after 12 months as the interests of the creditors prevail.