

A Guide to Cohabitation



- Understand the legal background.
- Understand how to establish a claim over property.
- Understand how to protect yourself financially moving forward.

This Guide has been designed to assist you with some of the general issues and to answer questions that you may have. This Guide is only intended to be a general overview of the law in relation to cohabitation and legal advice should always be obtained from Leonard Gray in application to a particular case.

Section

1

The Law

1. Common misconceptions

The latest projections issued by the Office for National Statistics suggest that within the next 25 years unmarried couples and single people will outnumber married couples for the first time.

It is a common misconception among cohabitants (those who are neither married nor in a civil partnership) that after relationship breakdown, the legal remedies open to the separating couple are similar to those available to married couples or civil partners. In fact, the applicable law is very different. When a relationship between unmarried partners ends, the two people are generally treated by the private law as two unrelated individuals, no matter how long they have lived together.

2. Legal Background

This is important, and must be considered carefully in the event of a cohabitation separation.

Unless you agree otherwise and formally record such an agreement, resolving any potential claim on each other's capital assets or income may be difficult and expensive, potentially involving lengthy court proceedings, the outcome of which is not easy to predict.

The Court has no brief to divide the resources of cohabitants to achieve an overall viable financial environment for either you or your former partner. There are a number of areas of law which are relevant, including the Trusts of Land and Appointment of Trustees Act 1996,

the Child Support Act 1991 and the Children Act 1989. This law is complex and more detailed advice should be sought from one of our family law experts.

When looking at the division of cohabitants' assets, the Court has a large volume of paperwork to obtain and consider in order to ascertain the contributions made by each party; for example, chequebook stubs, notes of meetings with the bank manager, etc.

The name(s) in which any assets and/or debts are held will be vital in deciding ownership/responsibility. Debts in both names may be pursued against either of you at the creditor's discretion.

In order to understand the Courts' approach, you must look to the concept of "Nominal" v "Real" Ownership.

3. "Nominal" v "Real" ownership

All property is owned in two ways. There is the formal title of who owns it and there is the person who owns it in the sense of being able to use it; for example, a property may be registered in the names of one of the parties' parents, but it could still be seen as belonging to the parties. Therefore, in order to work out who has what share in the proceeds of sale of a property, it is not enough to look just at the legal title.

If there is an express written agreement as to the shares of the property owned by each party, then this will generally be binding on the parties, even if they did not understand what they were signing; for example, a couple may have stated at the time of purchasing a property that they wished it to be under a joint tenancy, but not have intended that the house be shared between them equally in the event of a separation.

If there is no express written agreement, the Court must look at all the circumstances and decide what the parties probably decided, or would have decided if they had thought about the problem. Generally, those who hold their property as joint tenants will be treated as having equal shares, so the problems usually arise when the parties are tenants in common.

The Court is likely to look at factors such as:

- where the person who owns the land has promised the other a share in it;
- where there have been direct contributions towards a property. **N.B.** there may be situations which you do not expect to fall under this heading; for example, if parties have a mortgage in their joint names but one party is making the repayments, the Court may still treat the non-paying partner as having made a contribution. Also, indirect contributions, such as food or bills, or even decoration of the property, are unlikely to be taken into account here;
- if the “wife” has made a direct contribution of some sort at the outset, then the Court may be prepared to look at the whole panorama of contributions; e.g., bringing up children, and elevate her claim on the proceeds into a larger share.

In summary, these factors all reflect the basic concept that the Courts are looking for - intention.

The next Section of this Guide will look at how to establish a potential claim over a property.

Section 2

The home

In this Section of the Guide we look at the family home and what happens to that property in the event of your death.

1. Establishing a claim

In ascertaining a potential claim over your shared home, the first step is to look at who owns the property. If it is in one person's name, the other must consider the following principles when looking at any claim over that property:

- You may share in a property if you have directly contributed to its acquisition or value;
- You may share in a property if there was an agreement that you would;
- You may also share in a property if, in either of the above situations, looking broadly at the contributions made by you, it is right that you should do so;
- Where someone has relied on a promise or an understanding that s/he has a share in a property, the court will take minimum steps to prevent the property owner from acting inconsistently with that obligation.

2. What about repairs to the property?

The Court generally cannot order either of you to carry out repairs on the property; it may simply order a sale. It is difficult to predict whether any sums paid out by either of you will be taken into account by the Court, so any repairs to be done and payments to be made should be carefully recorded in your final agreement.



3. What happens to the property if one of us dies?

If one of you died, the survivor may have no claims over any money owned by the other. Generally, if a person dies without a spouse, his/her estate will pass to his/her children or, if there are no children, to his/her relatives in order of blood ties. A cohabitant may apply to interrupt the provision of the Will if s/he was being supported by the person who has died, or had lived with the person for the two years preceding their death. The Court will only overturn the provisions of a Will to the extent that this is required to provide for the maintenance of the person applying.

The next Section of this Guide will look at financial provision for children upon separation.

Section 3

The Children

In this Section of the Guide we look at how the children are provided for financially upon separation.

Whilst the Court can order the financially stronger party in a marriage to pay compensation to the other, or support him or her, there is no such thing as a “common law” husband or wife. Therefore, all the partner wishing to make a claim may do is to claim any property entitlements s/he has accrued or which have been agreed, or apply for support to enable him/her to bring up any child.

The Court may only award financial support on the basis of need, it has no power to order compensation from one partner to the other for the way that his/her earning abilities, pension and/or assets have been affected by child care responsibilities.

Maintenance for any child is generally overseen by the Child Support Agency (CSA). The Court may become involved if the child is old or if the parents are very high earners. It may also be involved if both parents agree and the residential parent is not receiving certain sorts of benefit, or if the non-residential parent has a high income.

The Court has power to order one parent to pay a lump sum to another, or order one parent to transfer property to another. Past cases have shown that the Courts are only willing to provide for a child until s/he leaves home, so even if it did require one parent to provide a home for child and the residential parent, it is likely that the provider of the home would have the right to recover that property, or a proportion of it, when the child was of majority age.

The next Section of this Guide will look at how every cohabiting couple may protect themselves.

Section 4

Protecting Yourself

In this Section of the Guide we look at every cohabiting couple may protect themselves when buying a property together.

1. Cohabitation agreement

Every couple buying a property jointly should consider very carefully and agree, before the purchase is completed, how they would wish the proceeds of sale of the property to be divided if the relationship ended. A properly prepared cohabitation agreement drawn up by one of our family law experts may be enforceable by the Courts, and could deal with how the assets would be divided at the time of the separation.

2. Making a Will

Every cohabiting couple should also makes Wills, particularly if there are children. For advice on preparing a Will, please refer to a member of our Private Client Team.

The next Section of this Guide will look at how to make an appointment.

Section 5

Making an Appointment

If you would like to discuss the issues raised in this Guide further then please contact **Sarah Orrell, Louise Minifie** or **Devon McNamara** who will be happy to do so.

T: 01245 504 904

E: sorrell@leonardgray.co.uk/lminifie@leonardgray.co.uk/
dmcnamara@leonardgray.co.uk

A: Leonard Gray LLP 72 -74 Duke Street Chelmsford Essex CM1 1JY

We are based in Chelmsford town centre, a two minute walk from Chelmsford Rail Station with car parking and disabled access at the rear of our office for the use of clients.

Open Monday to Friday, 9:00am to 5:30pm.

Alternative times by arrangement.

Other available Guides from Leonard Gray:

- **A Guide to Divorce – Obtaining a Divorce**
- **A Guide to Divorce – Obtaining Financial Orders**
- **A Guide to Children – Advice for Parents**
- **A Guide to Children - Children and the Courts**
- **A Guide to Wills following a Divorce or Separation**

