



## Information Sheet: Unmarried Separation

If you have separated from your partner recently, there are a number of matters which you should consider.

### What do I do if the property is in my partner's sole name?

- a) If your partner has left and the property is rented

If the tenancy is in your partner's sole name, this may cause you some difficulties. There is a risk that your partner will inform the landlord that they want the tenancy to end, and you may end up homeless as a result. You may be able to make an application to have the tenancy transferred into your name if your partner does not want to continue living there. If your partner wants to return, then you must not exclude them - they are entitled to enter the property.

- b) If you have left and the property is rented

If you have left the property and now want to return, unfortunately, unless you are married to your partner if the tenancy is in your partner's sole name then you have no automatic right to do this. Please ask for more advice about this if you need to.

- c) If your partner refuses to leave the property

If you want your partner to leave and they refuse, unless there has been extreme behaviour (usually violence) then there may be little you can do to force them out straight away. Please ask for more information about resolving these problems. You may be able to apply for an injunction order.

- d) If the property is owned by your partner

If the property is owned by your partner in their sole name, and you are not married then on the face of it, you do not have any automatic right to live there. If your partner threatens to make you leave, then you should seek further advice from us as a matter of urgency. You may have acquired an interest in the property, or, if you have minor children then there may be a possibility of applying for the property to be transferred into your name for their benefit. Please ask for more details if this may apply to you.

If you are married and the property is owned in your spouse's sole name, then you will be able to register a Notice at the Land Registry, confirming that you have "Matrimonial Home Rights". This will prevent your spouse from being able to sell or re-mortgage the property



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without your consent. You will also have a right to live in the property, and this right can be protected. Again, please seek further advice from us if you believe that further action is necessary.

### What if the property is held in our joint names?

If the property is in your joint names, then on the face of it, you will both have the right to live there. Neither of you should seek to exclude the other from the property.

#### a) If the property is rented

There is a risk that your partner can take action to terminate the tenancy even without your consent. It is important to seek advice about this possibility early on. You may be able to apply for the tenancy to be transferred into your own name.

#### b) If the property is jointly owned and you are not married

If you are not married, then you will both need to decide who, if anyone, will continue living in it. If neither of you wish to retain the property, then it should be sold. Unless there is an indication to the contrary (such as a Trust deed) then the proceeds will be split equally between you once the costs of the sale have been deducted. If one of you has made a substantial contribution towards the purchase of the property, or has funded improvement works (such as re-wiring, an extension etc.) then they may be able to claim a larger proportion of the proceeds.

If one of you wants to stay in the property, and the other wants it sold, you should consider purchasing the other person's share of the property. The property could then be transferred into the sole name of the person who wishes to remain there, upon payment of a lump sum to the other for their interest in the property. If an agreement cannot be reached about this, then an application may be made to the Court for an Order.

#### c) If the property is jointly owned and you are married

If the property is owned in joint names, and you are married, then the situation is very different. If there is to be a divorce, then the Court will have wide powers to change the ownership of the property, from joint names to one sole name, or even Order a sale of the property. They can also Order payment of a lump sum to the other party. Please ask for our letter entitled "Financial Matters - Ancillary Relief" for more information.



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When the property is jointly owned, and whether you are married or not, it will usually be on the basis of a "joint tenancy". This means that you both own the property though not in any specific shares i.e 50:50. This will mean that if either of you were to die, then your "share" in the property would automatically pass to the other tenant, your spouse, regardless of any wishes you may have expressed in a will. You may not have any objection to this, for example, if you have minor children, but if you would not want this to happen you should consider severing the joint tenancy. This can be done easily by us serving the other party with a notice. It does not require their consent. The effect of this is that your share will not pass automatically to your spouse. You will be free to leave your share to whoever you wish by way of a will. If the tenancy is severed it is important that you go on to make a will or the benefit of severing the tenancy will be lost. Please see the section below about wills.

### **What if the property is in my sole name?**

If the property is in your sole name, either rented or owned, and your partner will not leave, then you may be able to take action to force them to leave. This is less likely if there are minor children of the family, and they wish to remain in the property to care for the children alone. Please ask us for more information if you are concerned about this.

### **How can I make sure the bills are paid?**

The first thing to consider is whose name the bills are in. If they are in your partner's name, then the utility companies will only be able to pursue them for the amounts outstanding. If they have left then they may well inform the companies concerned that they are no longer in the property which may result in them ending their supply. It is important that you contact the companies yourself to let them know what is happening if you want to remain living in the property.

If the bills are in your name, and you have left, then bear in mind the information above that you will remain liable personally for these until you inform the companies otherwise.

If the bills are in joint names, the companies will usually be able to pursue either you or your partner, or both of you.

If your partner has left and will not pay anything toward the bills then you may be able to apply to the Court to ask for an Order that they pay towards these. If you are married, then this would be an application for "Maintenance Pending Suit" - please see our further



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information letter called "Financial Matters (Ancillary Relief)". Please ask us for more information about this if it may be relevant to you.

If you are not married, it may be possible to make an application under the Family Law Act in relation to the bills, or in relation to the maintenance/repair of the property. There are very strict criteria which will need to be met if you wanted to make such an application, so please ask for further information.

### **Joint bank accounts**

If you hold a joint bank account with your partner, consider that they may seek to withdraw all funds held there or incur an overdraft if only one signature is required on the account. Even if your partner runs up an overdraft the bank can pursue either you or your partner or both of you to recover the money.

Many banks will freeze any funds held in a joint account if they are aware that there is a dispute between the parties. You should arrange for your own wages (if any) to be paid into an account in your own name as soon as possible.

### **Benefits**

You should also consider whether you may be eligible for Welfare Benefits - we can refer you to other agencies who can tell you what you are entitled to receive.

If one party leaves the property then the person remaining should contact the local council to inform them of this as they will then be able to claim a rebate in respect of the Council Tax.

### **Children**

If there are minor children, then they are entitled to be maintained by the absent parent. The Child Support Agency now deals with assessments for child maintenance. The CSA should be involved automatically if the parent with care is in receipt of benefits. If they are not, then that parent can ask the CSA to deal with the matter in any event.

In some circumstances you may be able to make further applications for lump sum(s) or maintenance or in relation to property if you have minor children. Please ask me for more information if you believe that this may be relevant to you.



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### **If you already have a Will**

Whenever there is a change in your circumstances you should consider your Will. Separation is one of those circumstances. Whether you are married or not if you have a Will leaving part or all of your estate to your spouse/partner, then they will inherit even if you have separated. If you do not want this to happen it is important that you make a new Will or amend your existing one.

If you are married, upon pronouncement of Decree Absolute any provision in your Will that leaves part or all of your Estate to your former spouse, will no longer be effective. This part of your estate would then fall to be dealt with as part of your residuary estate or on the laws of intestacy if adequate provision has not been made in your Will. This does not apply to people who simply live together.

### **If you do not have a Will**

If you are married and you do not have a Will the laws of intestacy would apply to your estate in the event of your death prior to your spouse. This means that they would automatically inherit part or all of your estate depending upon the value of your assets. If you do not want this to happen is important that you make a Will.

If you live with someone but are not married unlike the position with married couples your partner or former partner would not automatically inherit. You should however give consideration to your will at this time.

### **Severance of Joint Tenancy**

Whether you are married or not, if you own property jointly with someone else, it is important that you give consideration to how you own that property on separation. Most people who own property together, own it in a way that is known as "joint tenants". This means that on the death of one of the joint tenants the other will automatically inherit that person's share. This will be the case even if your Will says something else.

Often people do not want their spouse/former spouse or partner/former partner to automatically inherit their part of the house, when they are separating or going through divorce proceedings. To avoid this situation happening you can "sever the tenancy". This means that you would own the house as "tenants in common".



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The effect of this is that you would each own a share in the property and you would be free to leave your share to whomsoever you wished by way of your Will.

Whether it is appropriate to sever to the joint tenancy will depend on your circumstances and personal preferences. You could end up with a situation whereby you have severed the tenancy but your co-owning spouse or partner pre-deceases you and you no longer automatically inherit their share having severed the tenancy.

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If you need any further information about matters in this information sheet, please do not hesitate to contact us.