

## The Unmarried Family

If you live together without going through the formalities of marriage then you should consider carefully the legal consequences. The Courts have always said, “If you want the protection in law that marriage brings, get married”.

### Property

Division of property is very different from the situation on divorce. There is a myth still floating around that there is such a thing as a “common law” spouse. If you are not married, then the Court does not have the same discretion to reallocate ownership of assets between you.

If you own a house jointly, the title deeds are often conclusive, although recent case law shows that “joint” ownership does not always mean “50/50”. Even so, if there are children under 18, it is possible to make an application to the Court to preserve their right to stay in the family home while they are still at school.

If purchasing a property together then you should consider how you wish to own it. This agreement can be reflected in a Trust Deed which is drawn up at the time of purchase. Get your contributions in writing, and your intentions as to how the sale proceeds should be divided.

### Living Together Agreements

If your financial affairs are more complicated it may be a good idea to draw up a “Living Together Agreement” which sets out all the financial aspects of the relationship. You will both need to take separate legal advice for this to be effective.

### Wills and Inheritance

You should think about making wills, as the Intestacy Rules are complicated, and may not reflect your wishes. Wills are particularly important if you have children from a previous relationship. Our wills and probate department will be happy to help and advise on this.

### Children

If you have children without being married then only the mother automatically has **Parental Responsibility (PR)**. This is defined as all the rights, duties and obligations the law gives for the upkeep of your child. In practice this means the power to make decisions on your child’s upbringing, medical treatment, religion, and any other important matters. As far as the father is concerned, since 1 De-



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ember 2003 if he was registered on the birth certificate as the father, then he too has PR. In other cases the father can acquire PR by entering into a Parental Responsibility Agreement with the mother, or by making an application to the Court.

## Separation

Separation for an unmarried couple can be as traumatic as going through a divorce, and the law helps you less. Where there are children then the situation is much the same as where the parties were married. The Court expects parents to agree arrangements between themselves as to where the children are to live and how often they will see the non-resident parent.

The Court will only become involved where there is a dispute. We can advise as to what would be regarded as "normal" levels of contact. In certain unusual circumstances, direct contact may not be appropriate. "Indirect" contact may be better. The golden rule in everything relating to children is "the child's welfare is paramount".

## Separation Deeds

If you aren't married, there cannot be any divorce proceedings, so no application can be made to the Court to resolve the finances. However, you can enter into a Separation Deed.

For the Deed to be fully enforceable, you would need to show that it was entered into voluntarily by each party. Both of you would need separate independent legal advice, and you would each have to give full and frank disclosure of all financial facts.

Separation Deeds only work where the parties are in agreement. If you and your partner cannot reach agreement then you may need legal advice on what a Court would do. But for now, the courts still don't have the scope and flexibility of decision-making that they would have for a married couple on divorce, until the law changes.



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