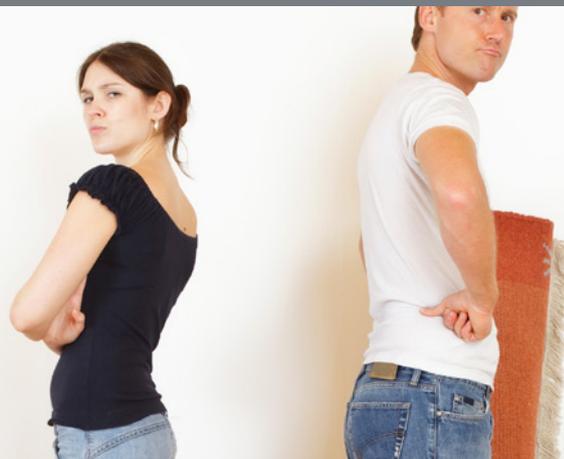


## Separation



Whether you are married or living together, separation usually means the breakdown of a relationship and often the breakup of a family unit. When this happens, it is important to try to organise things to help you to become more secure and more in control of your own circumstances. In this factsheet we have put together a list of topics which our callers most frequently wish to discuss regarding separation:

### Property

#### What happens when there is a dispute about the property?

We frequently speak to callers who may be living with their partner and want them to leave, or who may have already left the home but the other partner does not want to leave the home and sell the property. This can be a difficult situation. We speak to a large number of people who have:

- lived in a house belonging to their ex-partner, who may also be still living there
- lived in a joint property and want the other party to leave
- bought a property with a friend, relative or partner, fallen out and now want to sell
- made a contribution to the purchase of a property but have not recorded their share and now want their money back
- lived in a house for a long time which is jointly owned and suddenly, after a lengthy time away, the ex wants their share

Everyone who faces such a situation wants to know where they stand. It is one of our most frequently asked questions and one of the most difficult to answer as the law can be both complex and vague on these issues.

The range of options available often depends on your financial circumstances, the cause of the disagreement and whether you are married or not. Below are some examples of what may happen:

#### Property and unmarried couples

If you are unmarried and your partner does not want to leave the property much depends on whether you are joint owners or not.

If your partner owns the property then they cannot be made to leave. Furthermore, it is not possible for you to remain if they do not want you to. In these circumstances your partner can give you reasonable notice to leave and you will have no right to stay.

If you think you may have a claim in relation to the property because you have made a contribution towards its purchase, or significant improvement, further advice should be taken.

Individuals frequently ask us whether their partner has a claim on their property, even when it is in their sole name, should they separate. This is a complex area of law where the non-owning party may want to claim a beneficial interest in the property. A beneficial interest means an interest in the value of the property (money), not a right to own or live in the property.

Generally, just living in the property and contributing to outgoings is not in itself likely to give rise to a financial interest in the property. The law requires a much greater contribution and intention for ownership.

If you are a joint owner, it is not possible for one party to force the other to leave the home. The locks cannot be changed and you are not allowed to prevent your partner from entering the property. In some circumstances, if there is violence, or threats of violence to you or any children who live with you, it may be possible to apply for an occupation order. See [here](#) for more information on the .GOV website.



## **Married or civil partners and property**

The options in this case will depend on whether the property is owned by you both or just one of you.

If you are married and living in the home owned by your spouse/partner and they want you to leave, or you are concerned they may try to sell or remortgage the property without your knowledge, you can apply to register your matrimonial home rights in the property. This means that you cannot be forced to leave the home and you will receive notice of any further loans your spouse/partner may secure on the property. Details of how you can do this can be found [here](#).

If you are joint owners, it is not possible for one party to force the other to leave the home. The locks cannot be changed and you are not allowed to prevent your partner from entering the property. In some circumstances, if there is violence, or threats of violence to you or any children who live with you, it may be possible to apply for an occupation order. See [here](#) for more information on the .GOV website.

## **Joint owners and property**

If you are joint owners of the property and your partner, spouse or civil partner does not want to sell, it can be difficult to know what to do next. If the property is not sold you will remain liable for the mortgage repayments and often are not in a position to move on. We speak to many people where one party is refusing to co-operate with any suggestion to resolve the situation. You may still be in the property or you may have left and be living elsewhere.

For unmarried partners, it may be possible to apply to the court for an order that the property is sold. This type of action is known as a claim under the Trust of Land and Appointment of Trustees Act 1996 (TOLATA). Very often just the fact this action is possible is sufficient to

persuade a reluctant partner to agree to the sale.

If you are married, the property will be a matrimonial asset and how it should be dealt with, and who can live there, will be part of a larger matrimonial settlement or agreement taking into account other assets you may have and whether or not there are children

The court has the authority to make a range of different orders in relation to the family home. Some of these can require the property to be sold immediately or at some time in the future. The types of order that can be made are:

- Transferring the property from one party to another or from joint names to one party. This is often conditional upon the payment of a lump sum to the outgoing party or some type of deferred charge (mortgage) in their favour.
- Postponing the sale of the property until a future event, for example when the youngest child reaches 18 or ceases full-time education.
- Selling the property now and dividing the proceeds. Generally these types of orders are where there are no children at home.
- Transferring certain types of tenancy from joint names to one party. Usually it is relevant where the landlord is the local authority or housing association.

## **Buying the other partner out**

If your spouse or partner does not want to sell the property but wishes to buy you out then, this is often quicker than an agreed sale and certainly quicker, for unmarried couples, than a court application under TOLATA. This process is known as a transfer of equity and, if the property is mortgaged, will generally require the consent of your lender.

The lender may charge a fee for agreeing to this transfer and producing the relevant documents. This can vary from lender to lender. The effect of this procedure is that one partner remains in the property and is responsible for the mortgage and all other outgoings, whilst the outgoing partner receives their share of the value of the property and is released from any further liability for the mortgage and other outgoings.

For married partners, it is possible to deal with the matrimonial home in this way, either by agreement with your spouse or as part of a property adjustment order made by the court. In most cases such an arrangement will be part of a larger financial settlement.

## Unmarried tenants

If you are unmarried and tenants of your property, you can deal with the matter by agreement where possible. In such a situation you can approach the landlord requesting a transfer of the tenancy on the understanding the other tenant (your partner) is in agreement.

If you are unmarried and there is a dispute about the occupation of your home because your partner will not leave or agree to the transfer of the tenancy, it may be possible to apply to the court under the Family Law Act 1996. The application can be made if the tenancy is in your joint names or in the name of your partner.

As long as the tenancy relates to a property which is or was the family home, the following tenancies can be transferred:

- secure tenancies
- flexible tenancies
- introductory tenancies
- assured tenancies
- assured shorthold tenancies
- protected and statutory tenancies under the Rent Act 1977
- agricultural tenancies

Whilst it is possible to make this type of claim for an assured shorthold tenancy, it is very unlikely this would be appropriate as these types of tenancies are generally short term and likely to expire before any court application would be heard.

## Married or civil partners as tenants

If you are married or in a civil partnership and are tenants of your property under a secure or a long-term

assured tenancy, it will be considered a matrimonial asset and part of the assets to be divided either by agreement or as part of a property adjustment application or order. This is the case whether the tenancy is in the joint names of you and your spouse or just their name only.

## Children

Whether you are married, in a civil partnership or living together and separating, the effect of a separation can be significant for the whole family.

### Parental responsibility

As a parent, you will have parental responsibility for any children. This means you are responsible for such things as providing a home and providing for their education. Additionally you also have the right to choose their religion and also to consent to medical treatment should the need arise.

A mother automatically has parental responsibility as does a married father. An unmarried father has parental responsibility if named on the birth certificate. If you are an unmarried father who does not have automatic parental rights these can be acquired either by agreement with the child's mother through a parental responsibility agreement or by application to the court.

### Parental responsibility agreement

You can enter into a parental responsibility agreement using the form [here](#).

As parents you will need to complete the form ensuring your signatures are witnessed. Then the completed forms must be lodged with the family court. The process is completed once the High Court has received them. A stamped copy of the form will be returned to you.

### Parental responsibility order

If the mother of your child does not agree to give you parental responsibility it may be necessary to apply to the court for an order to be made. To do this you will need to complete the necessary form (C100) see [here](#) and pay the necessary fee.

### Maintenance

Child maintenance is the responsibility of the non-resident parent. If you live separately from your child, therefore, it is generally the case that you will be



responsible for paying maintenance. Many parents, once they are aware how much they should pay are happy to sort arrangements out between themselves. This can be done directly or with the help of friends and relatives. You can check [here](#) on the .GOV website the amount you will be required to pay.

The amount will take into account income, number of children (including other children for whom you are responsible) and the number of nights the relevant children stay with you.

This type of arrangement is known as a family-based arrangement and is by far the best way to deal with matters. However, this is not legally binding and of course can be subject to further variation as the parties agree.

If there are continuing issues it is possible to make a binding legal agreement. If this is what is required, you will need to contact to Child Maintenance Options (CMO) directly. You can do so [here](#) or telephone on **0800 988 0988**. There is an application fee of £20 if you have to get the Child Maintenance Service involved and there may be other fees required to manage the payments. Further details can be found [here](#) on the .GOV website.

If divorce proceedings are issued and a financial consent order is agreed, it is possible to incorporate details of maintenance payments within that. After a year, if either parent wishes to make changes to the agreement for maintenance, and these are not agreed, either party may apply to the Child Maintenance Service for assistance.

## Looking after children

One of the more difficult subjects to tackle when separating is where your children are going to live and how arrangements for their care will be agreed. These can often be difficult discussions but if matters can be

agreed it will be better for all concerned and can be more positive for the children.

It is important to understand that any arrangements for the children should be made in their best interests. Their welfare is the most important consideration at all times. It is the right of any child to see the absent parent and it is this right which needs to be provided for.

As with maintenance issues, you are encouraged to make an agreement with your partner for such things as where your children will live and how often they will see the non-resident parent. Where younger children are involved there is often other day-to-day stuff, such as taking them to and from school, that needs to be agreed.

How these issues are agreed and how frequently contact takes place will be influenced by the age of the children and the distance between the parents.

Any agreement reached between you is known as a child arrangements order. If you cannot reach an agreement with your partner and are considering further action such as a court application you will first need to attend a mediation appointment. The process is known as a Mediation Information and Assessment Meeting (MIAM). The purpose is to inform you how mediation works and to find out if it will work for you. Although your partner does not have to attend, you will have to otherwise it will not be possible to start any court action should that be necessary. Once the MIAM is completed, a certificate will be issued to allow further action.

If a court application is necessary you will need to complete a C100 available [here](#) via the .GOV website

Further information is also available [here](#) from HM Courts and Tribunals Service.

Advicenow is generally a good resource for further assistance and they can be found [here](#), although there is

frequently a charge for use of detailed information. This is approximately £15 - £20.

## Finances

It is important to maximise income and minimise outgoings. In most cases it is very difficult to divide one household into two and absorb the cost of that with no difference to your day-to-day expenses.

Starting with income, it is best to check:

**Benefit entitlement:** If you are unemployed, work part-time or have a modest income, you may be eligible for some benefits, including housing benefit to help with rental payments. There are online benefit calculators available [here](#) via the .GOV website.

**Tax credits:** If you work and/or have children you may be eligible for either Working Tax Credit or Child Tax Credit. To find out whether you qualify, use the HMRC calculator [here](#).

**Council tax support:** This is a means tested benefit which provides help for those on low incomes. It is administered by your local authority but you can check your eligibility [here](#) at Turn2us.

## Debt

Debt can play a very large part when parties separate. There may be joint debt such as a mortgage or other loans, as well as individual debts for credit cards etc.

We speak to a lot of people who have debts jointly with their spouses or partners, as well as their own individual borrowing. Generally there are several types of debt:

**Joint debts:** These are the responsibility of all the parties to the agreement and it is known as a joint and several responsibility. This means that if you or your partner do not pay the amounts due, the creditor will always require the other party to make those payments. In other words, the debt cannot be split at all.

The largest joint debt in most households is a mortgage. Priority should be given to making these payments to avoid repossession. If you are unemployed and receiving benefits, it may be possible to apply for help with these payments by applying for Support for Mortgage Interest. You can check your eligibility [here](#).

**Sole debts:** These are the responsibility of the person who has borrowed the money and whose name is

on the credit agreement. However, there are some circumstances when you may be able to claim some contribution from your spouse/partner. For instance, if you are married and the debt can be demonstrated to be a matrimonial debt and therefore repayable from joint assets.

Another example would be if the money was borrowed by one partner for the benefit of the other and it can be demonstrated that there was an agreement the money would be repaid. For example, if your partner does not have a good credit rating and you have borrowed money for them to purchase goods and they have made repayments to you, there is arguably a case that they should be responsible for the debt.

In these circumstances it may be useful to budget. To help there are online budget planners available. You can find one from your local Citizens Advice Bureau or Money Advice Service [here](#).

If you have significant debt issues and you need help we would recommend that you talk to a debt management company. There are some free services available from the following organisations:

[StepChange](#)

[Payplan](#)

[National Debtline](#)

[National Debtline – Scotland](#)

## Wills

Making and keeping a Will can be a difficult conversation with family members and none of us like to think there may be a time when this will be needed. However, when separating there are some circumstances when it may be advisable to update or make a Will if you have not done so before.

Where there are children involved you may need to think about guardians and making sure that they inherit assets you have rather than your spouse or partner. If you are an unmarried partner and have a joint-owned property as joint tenants or as tenants in common, you may want to ensure your share of the property passes to your family rather than your partner.

A joint tenancy is a type of joint property ownership which means that if one of the owning parties should die

the survivor will automatically inherit the property. If you own the property as tenants in common this means you own it in specific shares such as 50/50, 60/40 etc. In the event the share is not specified it will be assumed to be equal.

Tenants in common have no automatic right of inheritance. Therefore if you own property in this way it is important to make sure that you have a Will to deal with your share of the property.

If you have separated you may wish to change the ownership arrangements of the family home and convert the joint tenancy to a tenancy in common. This is known as severing the joint tenancy and you can find out how to do this [here](#) on the .GOV website.

- Cars are always a point of discussion. The registered keeper of the vehicle is not necessarily the owner. How the car has been financed and paid for is the best indicator of ownership. Again, if the car is subject to hire purchase (HP), whoever retains the car should continue to make those payments.

## Other assets

Usually when separating there are other assets which also need to be divided. These may be financial assets, other property, cars and house contents. If you are married, many of these items will be dealt with as matrimonial property and part of the divorce proceedings. If you are not married, dealing with these things can be the subject of debate and argument. In general:

- Items which are your personal goods will be yours to retain. This includes any gifts received from your partner.
- Jointly owned items are to be divided equally. Very often this includes the contents of the property. The best way to deal with this is to agree an inventory and share items between you. Items which are subject to credit agreements are generally taken subject to that agreement. In other words, if you have the item you also have the debt.

*NOTE: Please be aware there are links contained within this factsheet that may take you to external sites, we are not responsible for their content. This is a general advice and information factsheet only and should not be treated as a definitive guide and does not constitute legal or professional advice. We are not a law firm and information is not intended to create a solicitor client relationship. Law Express does not accept any responsibility for any loss which may arise from relying on information contained in this factsheet. This is not a substitute for legal advice and specific and personal legal advice should be taken on any individual matter. If you need more details or information about the matters referred to in this factsheet please seek formal legal advice. This factsheet is correct at time of going to print. The law set out in this factsheet applies to England and Wales unless otherwise stated.*