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Living together/Unmarried couples

More than 4 million people in England and Wales live together without getting married. Many of them believe that, after a couple of years, they become 'common law' husband and wife with the same rights as married couples. This is not true and many couples who live together are unaware of the potential legal difficulties that they face if the relationship breaks down.

Currently couples who live together do not fit neatly into the law. For many purposes they are treated as married, for instance when considering welfare benefits, but for other purposes, such as property rights, pensions and inheritance, they do not have the same rights as a married couple.

So, what is my position as an unmarried person if I split up with my partner?

- If the home is held solely in your partner's name you will have no automatic right to stay if they ask you to leave. This is also true if your home is rented and is in your partner's name only.
- Even if you are dependent financially upon your partner they do not have to pay you any maintenance (although they will have to pay child support for their children).
- You will each walk away with whatever savings and possessions are held in your own names. Possessions owned jointly are owned in the shares in which you contributed to the purchase price, i.e. if you paid 1/3 of the price you are entitled to 1/3 of the item.
- If you are a dad and haven't registered yourself as such on your child's birth certificate (since 1 December 2003) you will not automatically have parental responsibility.

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What if my partner dies?

- You will not automatically inherit anything from them. This includes your partner's share of the family home if you co-own the property as tenants in common (click here for more details on co-ownership). Carefully drafted wills are therefore vital to ensure that both partners' wishes are fulfilled.
- Even if your partner does have a will, if what you inherit is more than £312,000 (for 2008-9) you will have to pay inheritance tax. With property prices as high as they are many couples who previously did not have to concern themselves with inheritance tax now find themselves in an unexpected position. For more information concerning inheritance tax planning please contact our tax planning department.
- You will not receive any state bereavement benefit or state pension based on a percentage of your partner's national insurance contributions, even if you are dependent on their income.

So what can I do about it?

- If your home is rented try and make sure both your names are on the tenancy. Depending on your existing tenancy, it may not be worth losing your current tenants' rights but you should consider it when signing a new tenancy.
- If you are living in a home owned by one or both of you currently (or are about to buy a home) think carefully about how you wish to own it. If you decide to own it together, whether you own as 'joint tenants' or 'tenants in common' can make a big difference to your rights (see our article on buying a home together in the conveyancing section of the site).
- You should both make wills. Without them all your property and assets will pass to your closest blood relatives (or, if you have none, the state) and not your partner.
- If you are an unmarried dad consider getting parental responsibility for your children. For more details please contact us.
- Consider whether your pension schemes (either existing or new) pay survivor's benefits to unmarried partners. Think about how you can build up separate pension schemes for each of you.
- Make a co-habitation agreement (see our separate article). This will greatly assist a fair and amicable split if the relationship should breakdown.

To find out more talk to Tony, Rachel or Anne or visit www.gardandco.com.

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