

COHABITATION BREAKDOWN

INTRODUCTION

Cameron Jones Hussell & Howe Ltd is a local Firm providing a comprehensive range of legal services to the general public. We aim to provide an effective and efficient service in a friendly and approachable manner, and to combine modern ideas and technology with the traditional values of a family practice. Our ethos is “forward thinking: forward planning”

YOUR MATTER EXPLAINED

We live in a time where families take many different forms, and where the assumption that long term committed relationships exist only in the context of marriage has long gone.

The breakdown of a cohabiting relationship is a traumatic and painful matter and legally, the challenges can be more complex than dealing with divorce issues.

We appreciate that this is an upsetting and difficult time for you and we hope that this leaflet will give some useful guidance as to how matters are dealt with. We cannot hope to give a full and definitive picture of the various legal aspects of cohabitation breakdown, but we hope that this

document may help you to identify some of the issues that may arise in your matter.

PROPERTY ISSUES

It is important to appreciate that (contrary to many people’s understanding) there is no such thing as a common law husband or wife. You do not acquire any rights in a property or take on any obligations simply by virtue of the fact that you live with someone, for however long that period of cohabitation may be.

The Courts will first look at the deeds of any property or more commonly, the register of title of the property. This will very often be the end of the matter and it may not be possible to challenge the position as set out in the legal title.

There are however some exceptions. The first would be an express declaration of trust which confirms that the ownership of the property is not as set out in the deeds or register of title.

The second would be a constructive trust. This arises if there is a common intention that the property should be owned in a particular way and one party acts to their detriment, relying on that common intention so that it would be unconscionable for that person’s interest to be denied.

The common intention may have been expressed in writing or orally, or in some cases can be implied by a course of dealing between parties. This is normally applicable where the property is in the name of one party and where the other party seeks to make a claim over it.

In the case of jointly owned property, if the property is in joint names it will usually be presumed to be owned equally between the parties unless there is an express declaration to the contrary or if there is proof of a contrary common intention.

Another way of establishing an interest in property is by way of proprietary estoppel. This involves one party making a representation, or giving an assurance to the other that they have or will have acquired equal rights to a property, a reliance on that which is detrimental to the acting party, or a change of position in reliance on it, and unconscionable conduct by the other party in denying the rights of the other.

TENANTED PROPERTIES

A Court can transfer tenancies between cohabitants who no longer live together. Care needs to be taken where there is a joint tenancy, in that the cohabitant can validly surrender the tenancy on behalf of both. Undertakings or a suitable injunction order need to be sought to prevent this.

PROCEEDINGS UNDER SCHEDULE 1 OF THE CHILDREN ACT

Where an unmarried couple have a child an application can be made for financial relief for that child or children, and this can include an order giving the parent who has the care of the child the right to live in a property until the child is eighteen.

It does not enable the Court to alter the parents' shares in a property. It may result in an award of a lump sum, if the funds are available and the needs of the children justify it.

ENGAGED COUPLES

It is possible for a person to apply to the Court for a declaration of beneficial interests on which property within three years from the date the engagement ends. This is perhaps of limited importance in that it allows the Court to declare not alter interests. However there is power to apply to a Court for the same class of applicant where they have made improvements to the property of the other, and where the Court can make such order as is just in the circumstances.

INHERITANCE CLAIMS

It is possible that on the death of a cohabitant, the surviving cohabitant may make a claim against the estate of the deceased for reasonable financial provision. The survivor will need to show that they have lived with the deceased as if they were spouses or civil partners throughout the whole period of two years immediately prior to the death. Alternatively, a surviving cohabitant of less than two years standing may have a claim as a dependent of the deceased.

There are strict time limits for the making of such claims, so it is vitally important that you consult a solicitor urgently.

Most importantly, cohabiting couples should avoid reliance on the above provisions and should make Wills. Your cohabitant (unlike a wife or husband) is not automatically entitled to any part of your estate if you die intestate.

CHILD SUPPORT

Child Maintenance Options have a useful website with a calculator to work out child maintenance. The Court will usually not be involved in this process and we do not intend in this leaflet to go into detail in relation to this aspect.

COHABITATION AGREEMENTS

Why not avoid expensive disputes post separation by considering an agreement agreeing what your intentions are towards one another in terms of money and property? Ask your solicitor about drawing up such an agreement.

Court proceedings in these kinds of cases can be complex and very expensive.

MEDIATION

Mediation is available to help you sort out any of the issues which need to be decided, including issues regarding the children, and financial matters. This would involve you and your spouse meeting with a trained mediator who would try to help you reach

your own solutions to your problems. If you decide to pursue this, or you need further information about it, then we can give you the details of people qualified to help. The advantage of mediation is that you arrive at your own solution rather than having one imposed on you and without Court proceedings which can be lengthy and bitter.

COSTS

If your matter is being legally aided then we will have set out the full position in an accompanying letter.

If you are paying our costs privately then you will have received a letter setting out our charging rates and providing you with an estimate of costs, and a request for payment on account of costs.

Please note that we cannot accept payments in excess of £500.00 in cash, but would need such payments to be made by cheque, standing order, bankers draft or bank transfer.

If you do have any concerns about the costs you may have a right to object to the bill by applying to the court for an assessment of the bill under Part III of the Solicitors Act 1974. Details are available upon request.

IDENTIFICATION

It is our standard practice these days to request all clients to provide satisfactory evidence of identity. We enclose herewith a list of the items which are acceptable for establishing this. Please would you be good enough to call at the Office at

an early stage bringing with you suitable identification for photocopying. Occasionally, we may be asked by third parties to produce evidence of your I.D and we will assume unless you advise us to the contrary that you have no objection to us passing on details of your I.D. in such case.

COMPLAINTS

We do of course very much hope that you will not have cause to complain about the services which you receive from us. If you do however have any concerns about the way in which your matter is being handled, the costs presented to you or about our services generally, we should be grateful if you would please in the first instance contact the Fee Earner having the overall conduct of the matter in order to discuss your complaint. Should we be unable to resolve any complaint raised by you by this method, then we will ask you to put the complaint in writing to our Complaints Manager, John Hussell. He will then deal with the complaint from that point, providing you with full details of our complaints procedures. If your complaint is regarding a matter that he has conduct of, then Mrs Sally Kingsbury will deal with the complaint.

If you are still not satisfied you can contact the Legal Ombudsman (www.legalombudsman.org.uk). Tel: 0300 555 0333. Or you can email them at enquiries@legalombudsman.org.uk

Any complaint to the Legal Ombudsman must usually be made within six months of receiving a final written response from us.

The Legal Ombudsman may not consider a complaint about the bill if a client has applied to the court for assessment of the bill.

CONFIDENTIALITY

We will not discuss your business or disclose the contents of your file to any third party without your written consent except that:-

- Unless you instruct us otherwise, your file may be used for auditing or monitoring purposes and
- We are legally obliged under the Proceeds of Crime Act 2002 and other similar legislation to report any knowledge or suspicion of money laundering to the National Criminal Intelligence Service

CONCLUSION

We hope that the above notes and observations are helpful to you and will assist you in understanding how this matter is being dealt with. Please retain it for reference and if you have any comments or observations about our services then please do not hesitate to let us know.

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This leaflet is intended as a guide for existing clients of Cameron Jones Hussell & Howe Ltd. It is not intended to be a detailed statement of the law nor does it obviate the need to take detailed legal advice