



### **Protecting yourself financially**

It may be your intention to purchase a property with your partner, or you may already be sharing a home with a partner.

Couples who live together but who are not married or in a civil partnership, have few of the legal rights and remedies available to people who are married or in a civil partnership, and are therefore much more vulnerable if :

- One party dies
- The relationship breaks up

When a marriage or civil partnership ends, the Court has power to adjust who owns what. When partners separate, the Court can only say who **owns** the property, and not who **deserves** what. It may not even be entirely clear who **does** own the property. Sometimes it will be a case of whose name is on the deeds, and sometimes it will be a case of what the parties jointly intended and/or any contributions made in money or money's worth to the value of the house. It may be difficult to prove actual contributions. On separation either party may honestly have forgotten or refuse to admit their original intentions.

If one partner dies, the law makes **no** provision for the surviving partner on intestacy.

Whilst there are no absolute safeguards, the best present course, would be for you both to consider a Cohabitation Agreement. In simple terms it is a contract which you will both draw up, deciding both now and in the future how you want to arrange:

- (a) your home
- (b) payments on the home
- (c) the contents
- (d) responsibility for credit and loans
- (e) benefit of bank and building society accounts, investments and other assets
- (f) how to terminate or vary the agreement
- (g) repayment of your deposit made on the purchase of the home if for example they were of different amounts

The purpose of the contract is not only to “protect you from each other”, but also to protect you from the outside world, for example in the remote and unhappy situation where one of you dies, and the other had to prove who owned what to fend off greedy and disbelieving next of kin.

Once you and your partner have decided how current and future assets and debts should be shared between you with our assistance we would draw up the following:

- (a) A Cohabitation Agreement (to put this contract in writing)
- (b) A Declaration of Trust (so that your home was held officially in the terms agreed by you)
- (c) A Will for each of you and your partner, (to ensure that your wishes would be carried out after your death)

No-one anticipates encountering any difficulties in future. However, you don't buy life insurance because you anticipate being struck by lightning. It's an uncertain world and we could all use the reassurance of contingency arrangements. These arrangements provide the advantages of giving couples a framework to enable them to record their intentions and agree matters amicably whilst they are still living happily together.

May I also recommend that you consider specific policies of life insurance to relieve your partner of any unforeseen obligations after your death. To give an example of what I mean, were you to be paying spouse or child maintenance at the time of your death, your ex-wife or children could make a hostile claim against your estate, to seek to have that maintenance continued. This would deprive your partner of some of your assets if the claim was successful. However, if a Maintenance Order were to be backed by a policy of insurance then even if you died, the insurer would continue with your obligations. Similarly a specific life insurance policy to cover either your mortgage or your largest debt, would ensure that if anything unfortunate happened to you, your partner would not find the property being sold and your partner homeless, as the money was needed to pay your debts.

At the same time perhaps you and your partner could discuss financial arrangements. Have you made enquiry with your pension provider to ensure that the correct person gets the benefit of monies payable following your death? Have you considered pre-death tax planning, to minimize the taxation burden on your assets that would result from your death? Do not forget that cohabittees do not enjoy the same tax advantages as spouses / civil partners upon death.

*Dunn & Baker – Here to help you*

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