

The laws relating to post-relationship breakdown settlement of unmarried couples can be much more complex than for married couples and your financial rights can be comparatively restricted. Most importantly, despite the frequency with which the term is used, there is no such thing in this country as ‘common law marriage’ – it simply does not exist and there are no rights to maintenance against one another following breakdown of cohabitation.

It is therefore important to take legal advice on your rights and obligations, as the situation is probably not as straightforward as you might expect and the relevant law can be extremely complex. At Morrisons, we can help you to understand your position, following relationship breakdown, with regards to:

- Property ownership
- Children and maintenance

Cohabitation Agreements (also known as “Living Together Agreements”):

It is possible to reach agreement between you with a view to creating certainty about your arrangements by way of a Cohabitation Agreement, which can be prepared at any stage in the cohabitation and which is similar in principle to a Pre- or Post-Nuptial Agreement. Cohabitation Agreements can be used to set out your intentions regarding properties or other things such as cars, savings, mortgage payments and debts, as well as day-to-day expenditure arrangements and contributions you each agree to make to the financial arrangements. Generally speaking, these documents are enforceable as legal contracts.

Property ownership

If you wish to purchase a property with a partner in a relationship without a marriage or civil partnership, we will advise you to enter into a Declaration of Trust defining your respective interests in the property. In many cases these documents will be definitive, and may well avoid acrimonious and expensive litigation about the matter at a later stage if the relationship breaks down or on the death of either of you.

Where your relationship breaks down and you have no Declaration of Trust, the laws relating to property ownership are complicated.

Property needs to be dealt with, particularly where it is your home, but the nature and extent of your ownership, or what to do with it may be the subject of dispute. Either of you may wish to sell it, but there may be disagreement about whether, when and how to sell. Alternatively, you may wish to transfer it from joint names to the sole name of one of you, which may have tax implications even if agreement can be reached.

The main statute available for property disputes (whether by way of domestic relationship breakdown or otherwise) is the Trusts of Land & Appointment of Trustees Act 1996 (“ToLATA”), by which courts have the power to order sale, transfer or settlements of property.

Property disputes can take many forms. Those resulting from the breakdown of domestic relationships are usually based on informal agreements. The creation of rights to property may have been done without any intention of doing so and the amount of your former partner’s claim to property may be very much in dispute. The division of assets in these circumstances will be based upon the factual history of the case, including what was said, what was promised, and what was paid. There might be complex trusts issues arising, where there might be an argument that a trust can be implied to have been created, even if it was not spelled out in writing.

The property claims arising on relationship breakdown often overlap with ancillary issues such as the payment of occupational rent or financial provision for children.

Children and maintenance

Maintenance issues and disputes often arise with regard to the children of unmarried couples. Some of these may be dealt with by reference to the Child Maintenance Service (CMS), but others, such as 'top-up' maintenance in big money cases, will not. Difficult disputes often arise regarding housing and lump sums needed to assist a move, buy a car or otherwise incur capital expenses connected with the children during their minority. You should also be aware that settlements agreed through the CMS can incur significant additional cost to both parties.

Schedule 1 of the Children Act 1989 provides very broad powers to make orders for accommodation and lump sum payments, 'top-up' maintenance and other orders.