

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?

Our helpline frequently speaks 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](#).

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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.

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