



IMMEDIATE STEPS TO CONSIDER ON SEPARATION

This factsheet is intended to act as a general guide to the immediate steps you should consider taking if you have separated from your spouse or civil partner. We are happy to discuss the particular circumstances of your case in more detail.

Jointly owned property

(a) Forms of joint ownership

Joint owners may own a property as either:

- joint tenants, or
- tenants in common

In this context the use of the word 'tenants' does not refer to a rented property but rather how a property may be owned.

If you own the property as joint tenants you and your joint owner have separate rights and interests, but in relation to third parties you have the characteristics of a single owner. Under a joint tenancy the interest of one joint tenant will pass automatically to the surviving joint tenant on death.

If you own the property as tenants in common you and your joint owner can hold distinct shares in the property. This means that, unlike joint tenants, a tenant in common can pass on their share without affecting the interests of the other co-owners. The property also does not automatically pass to the other co-owner if you die.

The most common form of ownership for couples owning a family home is a joint tenancy. However, when the property was purchased you may have agreed to hold it as tenants in common or the joint tenancy could have been later converted into a tenancy in common.

The legal ownership of a property can be converted from a joint tenancy to a tenancy in common in a number of different ways. The most straightforward is to send a notice of severance to the other legal owner.

Please let us know if you wish to sever the joint tenancy and we will prepare a Notice of Severance to be sent to your spouse.

(b) The right to occupy property

You are both entitled to occupy jointly owned property. Neither of you can legally exclude the other without obtaining an order from the court known as an occupation order.

If you wish to apply for an occupation order to exclude the other person from occupying a property, we are happy to discuss with you whether this would be appropriate in your case.

Property owned solely by your spouse or partner

If your former home is solely owned by your spouse or civil partner, you continue to have the right to occupy the property as long as you remain married or in a civil partnership. The right to occupy the

property will end when your marriage/civil partnership ends (whether through death, divorce or dissolution). However, you can apply to the court to extend your rights beyond these events if needed.

If the former home is solely owned by your spouse or civil partner, we strongly advise you to register a home rights notice against the title. This can be done by applying to the Land Registry. The Land Registry does not charge a fee for registering your home rights.

Once the notice has been registered, the Land Registry will notify your spouse or civil partner.

The notice means that your rights will bind any lenders if your spouse, or civil partner, uses the property as security, and any potential purchasers if your spouse sells the property.

If your spouse or civil partner owns any properties other than the former home, you may be able to register restrictions against the title on these properties as well, although the process for registering these restrictions is less straightforward.

Please let us know if you wish to register a home rights notice or apply for any restriction against properties held by them.

Making a will

As long as you remain married or in a civil partnership, your spouse or civil partner may benefit from your estate if you die. Once you are divorced or the civil partnership is dissolved, any bequest to them in a will, or any appointment of them as an executor, will no longer take effect. If you marry again or enter a civil partnership, any will you have made will be revoked.

If you have never made a will, we strongly advise you to make one. If you do have a will, you should consider making a new one to reflect your change in circumstances.

Please let us know if you would like to be put in touch with a member of our wills and probate department about making a will.

Mortgage drawdown and joint bank accounts

If you have a joint mortgage, joint bank accounts or credit cards which you share with your spouse or civil partner, you should consider taking steps to prevent them from withdrawing funds or accruing additional liabilities on your credit.

If you have a joint mortgage, you should contact the mortgage lender to place a dispute indicator on their records to prevent your spouse or civil partner from drawing down on the mortgage, if there is any flexibility to do so.

It may be appropriate to consider asking your bank or credit card provider to freeze your bank or cancel any cards held by your spouse or civil partner.

Welfare benefits

If you are on a low income, you may be entitled to certain benefits that you were not previously entitled to receive. These may include housing benefit, pension credit, tax credits and universal credit.

If only one adult lives in a property, they are entitled to a discount on the council tax bill. You should apply for a discount if you have not already done so.

We cannot advise you on your entitlement to benefits, but organisations such as the Citizens Advice service will be able to help you.

Child maintenance

If your children live with you, you are entitled to receive child maintenance from the other parent.

The level of maintenance can be agreed between you, but if not the payment of maintenance can be enforced through the Child Maintenance Service (CMS).

More information, including a calculator which would give you an indication of what you can expect to receive, can be found on the Child Maintenance Options website (www.cmoptions.org/).

09/18

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