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THE MYTH SURROUNDING THE 'COMMON LAW SPOUSE'

Although the term 'common law spouse' is frequently used to describe a partner in a cohabiting relationship, it is in fact a myth and, contrary to popular belief, has no legal recognition. It was formally abolished as a legal term over 250 years ago by the Marriage Act of 1753. Unfortunately, many people still believe that if they are in a cohabiting relationship, they will have similar legal rights to a married couple.



In the UK in 2012, there were 5.9 million people in a cohabiting relationship. Cohabitation refers to a situation where you may be living with a partner, but you are not married or in a civil partnership with them.

A British Social Attitudes Survey conducted in 2007-2008, saw 58% of respondents to the survey state that they believed unmarried couples who live together for some time, probably or definitely had a 'common law marriage' which gives them the same legal rights as married couples.

If you are living with your partner and you are not married or in a civil partnership, you do not have the same legal rights as someone who is married or in a civil partnership. This is

regardless of whether you have a child together. Many people are living together without realising that they could be left in a difficult position should their relationship break down, or if their cohabitee were to die.

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FREE CONSULTATION EVENING

**Thursday 20th November 2014
between 5:30pm and 7:30pm**

Barker Gotelee is able to offer you a free consultation covering many legal issues such as: accident claims; matrimonial and family issues; funding for care home arrangements; wills and powers of attorney; financial issues on death; property matters.

For a free consultation, please call us on **01473 611211** or email **bg@barkergotelee.co.uk** to arrange your 20 minute appointment.

PLANNING FUTURE CARE – HEALTH & WELFARE LPA

Planning your care for the future – it's worth getting it right.

Did you know there are two different types of Lasting Power of Attorney (LPA)? One is for your property and financial affairs and the other is for your health and welfare. Making sure

that your property and financial affairs are in order for the future is, of course, very important. However, planning for your future health and welfare should not be underestimated.

This latter LPA is a legal document authorising one or more persons (known as

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THE MYTH SURROUNDING THE 'COMMON LAW SPOUSE'

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Couples who live together do not acquire financial rights against each other or rights to be maintained by each other in the case of a break down in their relationship. Nor is it possible to make claims against each other's property. If a cohabiting relationship breaks down, the parties involved have to rely on strict property and trust law, and the courts have very limited powers to assist either partner who is left in acute financial difficulties.

There are a number of risks involved with cohabitation and, as many people hold mistaken beliefs about the 'common law spouse', it is well worth taking some specialist advice.

If you have concerns or need advice and support concerning your own situation or relationship breakdown, please contact our family team, who can provide you with all the options available to you.

PLANNING FUTURE CARE – HEALTH & WELFARE LPA



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your 'attorney/s') to make decisions with regard to your health and welfare during your lifetime in the event that you become mentally incapable. The LPA allows your attorneys to take decisions in relation to your living accommodation and care; they can consent to or refuse medical treatment on your behalf and see to day-to-day matters such as your diet and dress.

Many people don't realise that no one – not even your spouse – has the automatic right to make decisions for you relating to your health

and welfare. If you become mentally incapable without having set up a LPA, your health and welfare become subject to the Court of Protection. This is known as 'deputyship'. The Court would then make the decision as to who would be appointed as your deputy in the event of mental incapacity. This process is both expensive and inflexible.

It is important for everyone to consider making a LPA for health and welfare. It gives you the choice to appoint attorneys that you trust. It means that you can provide

them with guidance and it also allows you to impose certain restrictions on your attorneys' powers, should you wish. The LPA must be registered at the Office of the Public Guardian before your attorneys can act for you, and it only becomes effective in the event that you become mentally incapable.



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FREE CONSULTATION EVENING

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ASK THE EXPERTS



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- Q:** I got married two years ago and my husband moved into my house. As he wasn't working, I supported my husband financially while he looked for a job. He has never found work and I have realised that I have made a huge mistake and have asked him to leave. He has moved out, but is claiming half the value of my house, as well as maintenance. What is my position?
- A:** The fact that you have had a short marriage is a factor that would be taken into account in deciding what your respective financial entitlements are. The law on divorce, as it stands, usually tries to restore people to the financial position they were in before they were married, on the understanding that this will allow each person to make ends meet and have somewhere suitable to live.

A person of working age is usually presumed to be fit to work and able to work, unless demonstrated otherwise. On this basis, it would probably be assumed that your husband has an earning capacity of at least the national minimum wage. If you are required to pay him any maintenance at all, it should only be a minimal amount and for a short period of time.

It would not be unreasonable to expect your husband to now live in rented accommodation, but you may be required to pay him a capital sum, albeit not a very large one, as a small deposit for a potential house purchase.

You may wish to make your husband an offer of a small financial settlement to see if you can resolve matters without further anguish. If you cannot resolve the dispute, you may need to consider using mediation.

WHY IS IT TAKING SO LONG TO BUY MY HOUSE?



A number of articles in the press recently have expressed concern over the shortage of conveyancers (solicitors who specialise in the legal transfer of property), and it has been suggested that this may be serving to slow down the house buying process.

Whilst it is clear that transaction times have lengthened by up to a month since the beginning of this year (according to data published by the Royal Institution of Chartered Surveyors), it is not necessarily the case that this has been wholly caused by a reduction in the number of conveyancers dealing with residential property purchases. Recommendations published by The Mortgage Market

Review in April 2014 brought in much tougher lending rules and required lenders to spend more time checking mortgage applications. It is therefore, much more likely that any delays in the time it takes for a house purchase to go through are due, in fact, to the length of time that it takes for a mortgage application to be approved. Nonetheless, it is also apparent that there are far fewer people involved in conveyancing work following the severe downturn in housing transactions between 2008 and 2012.

During that period a number of law firms shed entire conveyancing teams, and many experienced property lawyers either retrained into other disciplines or left the profession altogether.

For those about to embark on a house sale, the best advice is to ensure that all necessary papers and documents are readily available to supply to your conveyancer. This will include copies of any building regulation consents, planning permissions, gas safety and electrical certificates, together with copies of any guarantees which relate to work undertaken at the property. If these are supplied at the outset of a transaction then it is far more likely that the matter will proceed smoothly and without delay.



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CONFIDENCE IN THE COURT OF PROTECTION SET TO IMPROVE



Following the Government's introduction of new rules concerning Court of Protection decisions, many of its rulings may now be made public.

The Court of Protection makes decisions and resolves disputes concerning individuals who lack the mental capacity to manage their own affairs. For example, when a family member needs to be appointed to administer the financial affairs of an incapacitated relative or where there is a dispute or uncertainty as to whether a person's medical treatment is in their best interests.

Until this year, it was generally contempt of Court to publish any decisions made by the Court of Protection, and so very few were revealed. The primary reasons being that these cases were often particularly sensitive, usually concerning the affairs of vulnerable adults, and it was felt that greater privacy helped families and judges reach more satisfactory outcomes.

However, in January, the Government brought in rules which changed the guidelines so that many decisions will now be published, unless there are good reasons not to.

This is good news. It has been felt that the Court was too secretive and too unaccountable, thus stifling debate over its rulings.

Whilst many decisions will be anonymous, it is felt this greater transparency should improve public confidence in the Court of Protection.



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BANKRUPTCY: WHAT HAPPENS IF YOU OWN YOUR HOME?

If you find yourself in the unfortunate situation of having to declare bankruptcy, your affairs will be dealt with either by the Official Receiver or by an insolvency practitioner who is appointed as your 'trustee in bankruptcy', known as 'the trustee'.

Your interest in your home passes to the trustee as soon as he or she is appointed and they are then obliged to realise (sell) your assets to pay your creditors (the people to whom you owe money).

What happens next will depend on a number of factors, such as whether your home is owned in your sole name or jointly, the level of available equity in your home and, in certain circumstances, who else is living in your home. The trustee will need to know what your home is worth and what loans or mortgages are secured against it, to establish the value of their interest, or equity, in the house.

If your home is owned in your sole name, the trustee may apply for a court order for possession and sale of the property, although in the first instance, your

spouse, partner or another third party may be invited to purchase the trustee's interest. In the absence of any satisfactory offers or if you don't cooperate with the sale process, court proceedings will be issued but, in the case of your principal residence, this would not usually be until after the end of the first year of your bankruptcy.

If your home is sold on the open market, the trustee will seek to obtain the best price possible. You are not permitted to sell your home without the express agreement and involvement of the trustee.

If your home is jointly owned, the trustee can agree to the joint owner buying out the trustee's interest in it. This can be by way of a lump sum payment, instalment payments over an agreed period, or a re-mortgage. The trustee will

normally agree to such an arrangement if it means your bankruptcy estate receives a sum equivalent to the value of the trustee's interest.

Another option would be for the joint owner to sell the property (with the agreement of the trustee) and then pay over the trustee's share of the net proceeds. Alternatively, the joint owner might agree to the trustee selling the property and receiving their share of the net proceeds. The joint owner cannot sell without the agreement of the trustee.

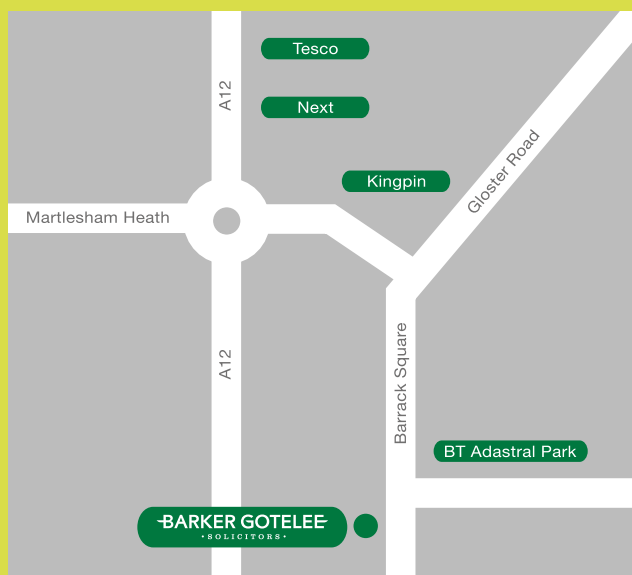
If the joint owner doesn't cooperate in a sale and is unwilling or unable to buy out the trustee's interest in the property, the trustee will apply to court for an order for possession and sale. If you cannot pay the mortgage repayments, your secured lender can repossess your

home. The lender's rights are not affected by the bankruptcy. If your home is repossessed and sold by the secured lender and there are any proceeds left after the mortgage and costs of sale are taken care of, your share of the surplus will be paid to the trustee for the benefit of your creditors.

If you are in financial difficulties and own a property, it is in your best interests to get independent legal advice without delay and, ideally, prior to bankruptcy.



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If you would like to discuss our services or talk to an experienced solicitor in one of our teams, please contact us.

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