

IMMEDIATE ISSUES TO CONSIDER WHEN SEPARATING FROM A SPOUSE, CIVIL PARTNER OR COHABITEE

If you are thinking about ending a relationship, or have already separated from your spouse, civil partner or cohabitee, there are key legal aspects that you should be aware of. The checklist below highlights 5 areas for consideration.

1. Financial documents

Financial documents are routinely needed when resolving your separation issues. You should ensure that you do not dispose of any financial documents, be they electronic or paper. You should also avoid annotating or amending documents which have already been created, if possible. Missing information or documents could cause difficulties when trying to resolve financial issues at a later stage. If you are a party to court proceedings regarding the financial issues between you and your spouse, civil partner or cohabitee, the court will require you to account for all relevant financial documentation and you could be at risk of a costs order being made against you if documentation has been destroyed or amended.

You may doubt your spouse, civil partner or cohabitee's willingness to provide disclosure of their financial documents following separation. However, you should be aware that you may be in breach of their right to confidentiality if you remove any documents belonging to them and penalties may be imposed by the court. You should not obtain such documents from any secure place, either by yourself or through any third party. This includes hacking into computers – which is a criminal offence.

2. Joint accounts and liabilities

If you have joint accounts, then you are jointly and severally liable for any overdraft. This means that each of you are responsible for the whole amount of that overdraft and the bank can choose who it claims against. If you are worried about them running up an overdraft, then you may want to close or freeze the joint account. When considering what to do with a particular account, do not forget that standing orders and direct debits may be paid from that account and salaries may be paid into it.

If you have a bank or credit card account in your sole name but your spouse, civil partner or cohabitee has a card for the account, you may wish to consider cancelling their card.

Where possible, it is usually better to discuss any such steps with your spouse, civil partner or cohabitee, rather than taking decisions without warning, which may cause hostility or exacerbate an already difficult situation.

3. Property ownership

When you own property (such as the home you live in) jointly it is possible to own it as "joint tenants" or as "tenants in common". If you are unsure how you own your property, we could do a search at the Land Registry to check this for you. This would cost around £12.

If you own the property as “joint tenants” then if one of you dies the other inherits their share automatically. If you own the property as “tenants in common”, then if one of you died your share of your property would pass in accordance with their Will, if there is one, or under the rules governing intestacy if there is not.

It is possible to change a joint tenancy so that you own the property as “tenants in common”. We can explain to you how to put this into effect. If you do this then you would need to make or update your Will so that it specifies what should happen to your share of the property on your death.

If you are married or in a civil partnership and the family home is owned in your spouse or civil partner’s sole name, you should register a Notice of Home Rights with the Land Registry. This notifies the owner and any third parties dealing with the property of your interest. We can assist you with this.

4. Wills

Whether you are married, in a civil partnership or cohabiting, you should consider making a Will, or changing your existing Will, when you separate to ensure that you have specified who you wish to inherit in the event of your death.

If you already have a Will, this will be effective until you make a new Will. If you do not currently have a Will, the intestacy rules apply. If you are married or in a civil partnership, your spouse or civil partner will inherit a specified share of your estate in the event of your death. This may not be your wish, particularly upon separation.

In the event of the death of your cohabitee, if you are no longer living together at that time, you may not be classed as a dependant, in the same way you would if you were living together. This may affect your entitlement to financial provision in the event of their death. You may therefore wish to take advice before making the decision to separate.

Our private client team can provide advice specific to your circumstances.

You should also consider whether any nomination you have made regarding death benefits need to be reviewed. You may have pension death benefits that you are able to nominate. You may want to speak to your pension administrators about this or review nominations you have already made.

5. Other urgent matters

Domestic abuse may have been a feature of the relationship. If you consider that you and/or your children are at risk from your spouse, civil partner, or cohabitee you should tell us at the earliest opportunity. This will enable us to advise you of any court orders that you may be able to apply for or other actions you might take to protect you and your children.

If you consider that there is a real risk that your spouse, civil partner or cohabitee will dispose of financial assets before an agreement is reached between you on financial issues, you should also inform us at the earliest opportunity. We can then advise you of any court orders or other steps that can be made to protect those assets.

If you have any concerns or would like more information, please contact your GL Law legal advisor. If you do not have their direct contact details, our reception team can help - call 0117 906 9400 or email hello@gl.law