



THE AMICUS LAW GUIDE TO

# PROTECTING YOUR FAMILY

Divorce, Separation  
& Settlements

Amicus Law

SOLICITORS

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**FRIENDLY YET TENACIOUS; WE ARE ON YOUR SIDE. SUPPORTING YOU AND PROTECTING YOUR INTERESTS.**

In some of life's most sensitive moments you need to feel your interests are protected. In our experienced hands you will.

Our team of family law experts are here to listen and represent you, through mediation, negotiation, or the court process if necessary. Acting with sensitivity, pragmatism and discretion, we get results.

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## HELPING YOU PLAN FOR YOUR FUTURE

### Cohabitation Agreements

The number of cohabiting couples, that is those who are not married or in a civil partnership, has increased dramatically over the last 20 years. Unfortunately, the law offers very little financial protection for such couples when their relationship breaks down and also if one of them dies. Even cohabitants who have lived together for a number of years are not afforded the same rights on separation as those who are married or in a civil partnership. There is no such concept as a common-law husband and wife.

To avoid difficulties in the future, we recommend that cohabiting couples consider what should happen in relation to the ownership of their home, its contents or any other assets in the event of their separation and can do this by entering into a Cohabitation Agreement.

### Jointly Owned Property

Where a property is owned in joint names, the first step is to establish from the Title Deeds whether you hold it as joint tenants (where the property automatically passes to the other on death irrespective of any Will) or tenants in common (where you each own separate shares which will pass in accordance with the terms of your Will or Rules on Intestacy in the event of your death).

Where the property is held as joint tenants you will each be treated as owning an equal share regardless of unequal financial contributions towards its purchase or maintenance.

On separation, you can either agree to sell the property and share the net proceeds or transfer it to your partner with a payment being made by them to you in respect of your interest.

We can help.

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## HELPING YOU PLAN FOR YOUR FUTURE

### Sole Property Ownership

Just living in a property which is in the sole ownership of your partner will not automatically entitle you to a share of that property regardless of how long you have lived together or whether you have children.

An application to Court can be complicated and expensive and if possible, every attempt should be made to reach an agreement.

At Amicus Law we can advise you in relation to this complex area, explain your options and support, guide and represent you through negotiations and ultimately if necessary, Court proceedings.

### Your Children

Where you and your partner have children together, the law is helpful, as the one who has day to day care of the child/children can apply to the Child Maintenance Service (or CMS) for maintenance for them.

The parent with care of the children can also apply to Court for financial support from the other parent to include the provision of a house for themselves and the children to live in. In such circumstances the provision is only made until the children are no longer minors. It is also possible to apply for the other parent to pay independent school fees either in whole or in part.

Amicus Law seeks collaborative settlements wherever possible and will work with you to protect your interests and those of your children.

## HELPING YOU PLAN FOR YOUR FUTURE

### Civil Partnerships

A Civil Partnership can be entered into by a same sex couple and is a same sex marriage in all but name. Civil partners benefit from identical status to married couples, with the same rights and remedies available on separation and death.

The courts have the same powers to make financial orders on the dissolution of a civil partnership as they do on divorce when a heterosexual marriage breaks down and civil partners have the same rights in relation to children as married couples.

They are able to acquire parental responsibility for their partner's children in certain circumstances and adopt a child jointly with their civil partner.

The same protection from domestic violence is given to civil partners as heterosexual couples.

Legislation in relation to inheritance on death has also been extended to cover

civil partners so that they now have the right to make a claim on their late partner's estate if inadequate or no provision has been made for them by Will.

Civil partners are also treated in the same way as married couples for all tax purposes and in relation to many welfare benefits.

## SUPPORTING YOU THROUGH DIFFICULT TIMES

### Separation Agreements

If you are unmarried or married but do not wish to divorce or dissolve your civil partnership immediately, then you may wish to enter into a Separation Agreement to confirm that you will live apart and to record details of the financial arrangements that you have agreed with your former partner.

A Separation Agreement can be wide ranging but typically will state what should happen to your property and other assets and if maintenance is payable, indicate how much and how often it should be paid.

Also, if you are married or in a civil partnership and contemplating divorce or dissolution in the future, then the Agreement may incorporate the arrangements for this based upon 2 or 5 years separation.

A Separation Agreement is a form of contract and is not automatically binding on the Court.

However, the Courts will attach considerable weight to such Agreements provided they have been created in the correct way and the following criteria have been met.

## SUPPORTING YOU THROUGH DIFFICULT TIMES

### Divorces

Although the breakdown of a relationship can be one of life's most difficult experiences, the divorce process itself can be reasonably concise and dignified if handled by an expert divorce solicitor.

In order to obtain a divorce in England and Wales, you must have been married for at least 12 months and be able to demonstrate that your marriage has irretrievably broken down in one or more of 5 ways as follows:-

- Your spouse has committed adultery and you find it intolerable to live with them.
- Your spouse has behaved in such a manner that you cannot reasonably be expected to live with them.
- Your spouse has deserted you for a period of 2 years or more.
- You have lived apart for 2 years and you both agree to there being a divorce.
- You have lived apart for 5 years or more. In these circumstances, your spouse's consent to the divorce is not required.

Divorce is usually a paper-based process from the issue of the Divorce Petition (now known as an Application) to Decree Absolute when the divorce becomes final. It is unlikely that you will need to attend Court as this is only required in exceptional circumstances and we will advise you if these arise.

The person who commences proceedings is called the Applicant (they used to be referred to as the 'Petitioner') and the other party is called the Respondent. Nearly all of the steps in the divorce are dealt with by the Applicant, with the Respondent in the vast majority of cases only being required to complete one form.

The process of Divorce is sensitive and one of the most difficult things you will have to deal with. We will be in your corner, helping to protect your interests and those of your children.

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## SUPPORTING YOU THROUGH DIFFICULT TIMES

### Financial Settlements

On divorce or the dissolution of a civil partnership, the law allows each party to claim various types of financial relief from the other. The Orders available are:

#### Interim Spousal Periodical Payments

This is where one party is ordered to pay income to the other party on a regular basis e.g. monthly until either the divorce has been concluded or a financial settlement has been reached. Such applications are usually made on an urgent basis and consideration needs to be given to whether the applicant has any other resources upon which they can rely before such a claim is made.

Spousal Periodical Payments Order (also known as a Maintenance Order)  
A dependent party may be entitled to regular income payments for themselves in addition to any child maintenance they may receive.

Whether this is appropriate will depend upon all of the circumstances of the case and in particular the parties' respective resources and reasonable needs.

#### Lump Sum(s) Order

This is where one party is ordered to pay the other a lump sum or series of lump sums on or before a specified date.

## SUPPORTING YOU THROUGH DIFFICULT TIMES

### Property Adjustment Order

This requires one party to transfer all or part of an interest in property to the other party. The transfer can either be outright or subject to a Charge (like a mortgage) in favour of the transferring party. This would specify their entitlement to a certain percentage of the value of the property upon the occurrence of the first of a series of named events e.g. the recipient's re-marriage or the youngest child of the family reaching the age of 18 or completing full time education.

Orders in relation to Pensions (including Pension Sharing and Pension Attachment Orders) With Pension Sharing the Order directs that a proportion of the member's Pension Fund (known as the Pension Credit) should be transferred to the other party who will then become the holder of that part of the pension. It will either remain with the same organisation (known as an Internal Transfer) or it will need to be transferred to an outside pension provider (known as an External Transfer) depending

upon the rules of the member's Pension Scheme.

Financial Settlements can be complicated but with the right Solicitor on your side you can rest assured that your interests are being protected through all of the formal steps.

The Court has a duty to consider whether there should be a clean break so that the assets are distributed in such a way as to ensure that each party is financially independent and that one party is not required to make on-going spousal periodical payments to the other.

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We are here to help you plan ahead or fight your corner should the worst happen. For more details please call **01823 462 525**



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# Amicus Law

S O L I C I T O R S

We believe accessibility is very important, which is why we have invested in a network of local offices, to make it easier and more convenient for our clients, rather than one big regional office. We are available to see you and discuss your requirements at any of the following locations

## Taunton

Rumwell Hall, Rumwell  
Taunton, Somerset  
TA4 1EL

01823 462 525

## Bridgwater

Regional Rural Business Centre  
Market Way, North Petherton  
TA6 6DF

01278 664060

## Minehead

9 Parkhouse Road  
Minehead  
TA24 8AB

01643 701888

## Yeovil

Magnolia House,  
54-58 Princes Street,  
Yeovil BA20 1EQ

01935 426047

## Martock

31 North Street  
Martock, Somerset  
TA12 6DH

01935 822572

## Exeter

Boulevard House  
7 Southernhay West  
Exeter, EX1 1PJ

01392 964930

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