



/guide

Your
questions
answered

LGBTQIA+ DIVORCE

Divorce is rarely smooth or easy, even for couples who part on good terms.

For those who identify as part of the LGBTQIA+ community, we have put together the following guide to give insight into some of the unique challenges faced by LGBTQIA+ couples upon divorce, dissolution or separation.

At Stowe Family Law, we have expert lawyers who are trained in all aspects of family breakdown and can support you through the specific challenges you may come up against.

Cohabitation

Cohabiting couples are the fastest growing family type in the UK. It is common for couples to live together for a period either before marriage or civil partnership or to remain as cohabiters.

For couples who are part of the LGBTQIA+ community, cohabitation may last considerably longer before marriage or civil partnership than for their heterosexual counterparts. This is often due to the perceived difficulties within same sex marriages and civil partnerships.

As cohabitation may have lasted a significant length of time, it is important to consider the assets that were built up during this time, for example property or inheritance. When a couple gets married or enters a civil partnership, these could then be considered matrimonial assets. If this is the case, they will form a part of the marital pot upon divorce or dissolution and need to be divided.

It is important to obtain proper legal advice on what assets are considered matrimonial especially if they were gained before marriage.

For assets that are considered matrimonial, anything valuing over £500 will form part of the marital pot and may be shared between the divorcing couple. It is important to note that apportioning of marital assets will be based on the current and future needs of each party.

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Non-matrimonial assets are treated differently to matrimonial assets. Non-matrimonial assets may be such assets that have been accumulated during the cohabitation period and must also be stated in the financial disclosure at the beginning of your financial negotiations.

These may be used as part of the marital point in a financial settlement in certain instances, for example if one partner is unable to financially support themselves after divorce/dissolution.

If you wish to protect the individual assets you have built up throughout a period of cohabitation, it may be worth getting a cohabitation agreement which lays out who owns what in terms of property, finances and other assets. The cohabitation agreement can be transferred into a prenuptial agreement if you later decide to marry or enter a civil partnership.

It is important to remember that as a cohabiting couple, your rights are not in line with married couples or those within civil partnerships. There is no such thing as a common law marriage. Seeking legal advice is very important, especially when dealing with finances.

Child arrangements

Child arrangements can be complex in relationship breakdown.

For many LGBTQIA+ couples, any child from their relationship is likely to only be biologically related to one parent, depending on the method of conception.

For a child born to parents who are in a civil partnership or marriage at the time of birth, both parents will have parental responsibility for the child. Others will gain parental responsibility when registering the birth by way of being on the birth certificate or applying for parental responsibility.

If a child was born through surrogacy, both intended parents will have to obtain a parental order or alternatively adopt the child to gain parental responsibility.

For children born through surrogacy, the intended parent(s) can apply for parental order as a sole applicant or together as joint applicants. However, there are certain criteria that must be met. In both cases, one parent must be genetically related to the child. The application must be made within 6 months of the child's birth. You must also be married, in a civil partnership, or living as partners.

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Without parental rights, you cannot automatically make an application to the court in relation to the child. Instead, you must file an application requesting permission to apply.

You cannot make an application for parental responsibility after you have separated from the child's legal parent if you are not genetically related to the child.

When a party is considering making an application to the Court in respect of a child it is encouraged to attempt mediation prior to making such application. Mediation can be highly successful saving both parties considerable costs and time.

At Stowe Family Law, we have expert lawyers who can guide you through the processes associated with parental responsibility.

Pet Custody

For some couples, particularly those in the LGBTQIA+ community, the options to have children are limited. Pets can replace children and take on a powerful status in the family.

However, this can make relationship breakdown very acrimonious.

In 2021, 27% of divorces involved disputes over pet custody.

To put protections in place in the event of relationship breakdown, some couples are putting 'petnups' in place. A petnup is similar to a prenup (prenuptial agreement) as it lays out the ownership of the animal and who will get to keep it in the event of a relationship breakdown.

Legally, pets are considered 'chattel'. In the event of divorce or dissolution, the pet will go to whoever is the registered owner i.e., usually whoever paid for the animal. The only exception is if there is clear evidence that the pet was gifted to the other party.

In cases where the pet has been given as a gift, it may be worthwhile investigating a petnup which specifies the exact details of the gift and on what basis it was made. Although not legally binding, it can be useful in situations where there are disputes and may help a court to decide.

Conclusion

At Stowe Family Law, we have lawyers who specialise in all areas of relationship breakdown, including the specific challenges that may be faced by LGBTQIA+ couples.