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providing a specialist service

# ASHBY FAMILY LAW PRACTICE SOLICITORS

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## Separation

If you and your partner separate, the relevant law depends on whether or not you are married.

If you are married to each other, the law falls broadly into the following categories:

- **Maintenance:** You may need maintenance payments from your spouse so that you can afford to support yourself and/or your children. If these payments can't be agreed, we can advise what you are legally entitled to, and how you can apply for payments.
- **Division of assets:** If your separation is likely to be permanent, it will need to be decided how the assets you hold with your partner are divided, including your home. It's often better to discuss this with your spouse and come to an agreement (perhaps with the help of mediation), but if this isn't possible, you will have to apply to the court to decide exactly what form this division will take. We can help you throughout this process.
- **Children:** If it's not possible to agree on the arrangements for your children (*i.e.* where and with whom they should live and what contact the other parent should have with them) then we can try to negotiate an agreement on your behalf, or refer you and your separated spouse to mediation if appropriate. If necessary, we can assist you in applying to the court for a **Child Arrangements Order**. For further details see our page on [Children](#).
- **Occupation of the matrimonial home:** If you can't agree on who should occupy the matrimonial home, both in the short term and in the long term, then you may be able to make an application to the court for an **Occupation Order**. The court can in certain cases declare that one party is entitled to occupy the house to the exclusion of the other, perhaps for a limited period of time or until the issue is finally determined in divorce proceedings.
- **Domestic violence:** The police should be contacted if you are a victim of domestic violence (which is widely defined). It's important to bear in mind that even if there hasn't been physical abuse, a course of conduct may amount to harassment, which is a criminal offence. Protection can be obtained by an application to the court for a **non-molestation order**.



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If you and your partner are **not married** to each other, then the law differs in some respects:

- **Maintenance:** You are unable to claim maintenance for yourself, but you can receive it for the purposes of providing for your children. Unless the rate of maintenance can be agreed, it would normally be necessary to apply to the Child Maintenance Service.
- **Division of assets:** If you cannot agree between yourselves on the distribution of any capital assets that you own, including the house you live in, then the powers of the court are much more limited. For more information see our page on [Financial Issues](#).
- **Children:** In most respects the courts do not distinguish between cases where the parents of a child are married and cases where they are not. There is, however, one important difference between the two and this relates to **Parental Responsibility**, which broadly means all the legal rights and duties which parents have in respect of their children, including the right to make decisions as to their upbringing. If you are not married the mother will always have parental responsibility and, in respect of births registered after 1st December 2003, so will the father. If the father does not acquire parental responsibility automatically he can acquire it by an agreement with the mother or by applying for an order of the court.
- **Occupation of the house:** Similarly to cases involving married couples, the court can decide who should occupy the house where you last lived together.
- **Domestic violence:** You can still apply for an injunction to protect yourself from a violent partner. You may also be able to apply for an Occupation Order, although different criteria apply in the case of couples who have not been married to each other.

If you are separated or are about to separate, you should seek legal advice. Contact us to arrange an initial consultation with one of our solicitors. The first half hour consultation is free of charge, and of course commits you to nothing. Telephone us on 01332 293 293 or e-mail us at [solicitors@afip.co.uk](mailto:solicitors@afip.co.uk).

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