

Cohabitation - A Guide For Unmarried Couples



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The Myth of 'Common Law' Rights

If you are one of the growing number of people who choose to live with your partner rather than to marry (cohabitees), don't be fooled into thinking you will acquire rights as a 'common law spouse'.

The reality is that cohabitees enjoy and/or acquire no special rights in relation to each other no matter how long they have lived together. s

This guide sets out the position between cohabitees in relation to their children and finances and outlines some of the steps that can be taken to protect rights as part of a couple with regard to property and inheritance.

Children

Parental responsibility

Although mothers automatically have parental responsibility in respect of their child(ren), unmarried fathers have no automatic legal rights or responsibilities (other than financial responsibility) towards their child(ren), even if they are living with the mother.

On separation

On separation, both parents are entitled to apply to the Court for orders relating to Residence and Contact whether or not they have parental responsibility. Decisions in relation to children are made with the child's welfare as the paramount consideration. There is no presumption that parents should spend equal time with their children, although the Courts do recognise the importance of a child maintaining regular contact with both parents.



Finances

Property

It can be very difficult and expensive for a cohabitee to make a successful claim on a property in which they live with their partner, unless their name is on the title deeds. So if you live in a property which your partner owns, you should ask him or her to sign an agreement which sets out what interest you have in the property. If your partner is not willing to do this, you should think very carefully about whether to make any contributions towards the property, particularly capital contributions, as you might not get these back when the property is sold. If you do make contributions, you should keep a careful record of these, although even this might not be enough to enable you to establish an interest in the property.

Even if the property is jointly owned, there can be arguments about the size of share that each person owns. Just because one party contributed more to the purchase price does not automatically entitle that person to a greater share in the property.

Cohabitees are advised to arrange for legal documents to be drawn up by a solicitor to ensure that their wishes are carried out and the property shared fairly should they decide to separate. In particular, where property is jointly owned, it is important that the nature of the ownership accurately reflects what is intended.

Jointly owned property can be owned either as joint tenants or tenants in common:

As joint tenants, each party has an equal entitlement in the property. On sale, the proceeds will be divided equally, regardless of contributions each has made to the purchase price or the outgoings. On the death of one of the owners, their share of the property will automatically pass to the other regardless of the terms of any Will.

Tenants in common have specified interests in the property, which might or might not be equal. A separate legal document, called a Declaration of Trust, sets out the shares which it is agreed each has in the property. It can also



specify the contributions which each must make towards the property and the circumstances in which the property should be sold. On death, when property is owned as tenants in common, the deceased's share does not automatically pass to the survivor, but passes in accordance with the deceased's Will or, if none, under the Intestacy rules.

So if you are thinking of buying or already own a property with your partner, speak to a member of our Family Department about drawing up a Declaration of Trust and/or Cohabitation Agreement. As well as setting out the basis on which you own joint property, a Cohabitation Agreement can detail agreed arrangements about division of other assets, including personal belongings, and how debts will be allocated.

Maintenance

Unmarried couples have no right to claim maintenance from each other upon separation, except in respect of children. In most cases, the amount of child maintenance which should be paid is determined by the Child Support Agency in accordance with a formula. Any agreement which you reach, either before or after separation, which fixes the level of maintenance to be paid, does not prevent either party from applying to the Child Support Agency for an assessment, even if this would result in a different amount being paid. An agreement not to make an application to the Child Support Agency is not binding.

Wills

Make sure your partner is provided for

Unmarried couples in the UK are given no automatic right to inherit from their partner's estate (property, money, assets) should they die. Without a Will, the law states that your "next of kin" will benefit and dictates the proportions in which they will benefit, starting with your spouse (if still married), children, parents, siblings etc. The law does not recognise unmarried partners as 'kin' (no matter how long the couple have been together) and as a result, unmarried partners who are not specifically provided for in a Will, have to rely on the good nature of the deceased's family to pass on any gifts, property or assets, or otherwise resort to litigation.

If you have a partner and wish to protect their right to live in your property, to make them a gift on your death, or even to give them all of your assets, you must make a Will.

Unless your partner owns part of your house or flat, they will have no automatic right to continue enjoying it after your death. Even if they do own a share, there is still a risk that family inheriting your share may try to force a sale or charge rent on your share. Whilst you may hope that your family will know and carry out your wishes without you needing to write them down, the reality is that where money is involved, families will not always act as you had hoped.

What does a Will enable you to do?

Making a Will enables you to :

- ✓ Make specific provision for your partner, who will not otherwise have the same rights concerning your Estate as a spouse
- ✓ Plan the distribution of your estate advantageously for tax purposes
- ✓ Appoint guardians for your children if you are the surviving parent, and establish trust funds to look after their financial future
- ✓ Provide for any specific wishes you may have regarding the bequest of certain items of property or sums of money to your partner, friends, relatives or charities
- ✓ State your wishes regarding your funeral arrangements
- ✓ Appoint executors to carry out the terms of your Will, ensuring that you do not leave such a task to a friend or relative who may find the whole matter rather bewildering

Inheritance Tax

With the recent rise in house prices inheritance tax is no longer a matter solely for the extremely rich. Currently estates amounting to less than £325,000 pay no tax (this is often referred to as the Nil Rate Band). In the South East, where the average house price is over £200,000 this means that many estates become liable to inheritance tax.

Couples who are either married or in a civil partnership can now merge their two tax free allowances to create a larger allowance. This is not the case for unmarried couples. In this situation the estate of the deceased is liable to tax (currently at 40% on assets in excess of £325,000) and this could have a disastrous impact on the surviving partner's financial stability.



Whilst there are fewer options open to unmarried couples to save inheritance tax, careful planning and preparation can still mitigate against the full impact of the tax. If you feel that you have a potential liability to inheritance tax then you should seek professional advice.

Blandy & Blandy LLP does not assume legal responsibility for the accuracy of any particular statement contained in this guide. In the case of specific problems we recommend that professional advice be sought.

Contact us

If you would like to speak to someone about our services or discuss your situation, please contact Brenda Long, Partner

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