



Guide to cohabitation

An increasing number of people are choosing to live together without getting married. In fact, there are currently more than four million people cohabiting in England and Wales.

Whilst cohabittees do enjoy legal protection in several areas, they still have significantly fewer rights than couples who are married or in civil partnerships.

This can bring its own set of problems, with many cohabiting couples only discovering how few rights they actually have when their relationship breaks down. This is where disputes can arise.

There are things you can do to protect your position before you start to live together. It is therefore prudent to see a solicitor and take some advice at an early stage. Professional advice can help you avoid the stress and financial loss which are almost inevitable if the relationship subsequently breaks down.

If the relationship does break down, it is important to seek independent legal advice to ensure that disputes are resolved as smoothly and as quickly as possible. Your solicitor's job is to look after your best interests, providing realistic, professional advice that is right for you and your circumstances, using their knowledge of the law and their professional experience.

This guide covers some of the key points relating to the rights of cohabittees. However, please note that this is for general guidance only, so you should always seek professional advice tailored to your own circumstances before entering into any arrangements.

What rights do cohabittees have?

Many people believe that if they live together for long enough, they will automatically become 'common law husband and wife' and therefore enjoy the same rights as married couples or civil partners.

However, this is a myth. As far as the law is concerned, there has been no such thing as 'common law' marriage in England and Wales since 1753.

This means that unmarried couples who live together do not enjoy the same legal recognition as married couples or civil partners – although they often do not realise this until a relationship breaks down.

This lack of rights is not just restricted to relationship breakdowns, however. If one partner dies then the other partner will have no automatic claim on their estate if that person died without leaving a Will.

There are some obvious steps you can take to protect yourself when entering a relationship:

- make a Will and ensure your partner does the same; although a Will can be changed before death at any time it does offer some security.
- put any property in your joint names, or if this cannot be done, have your solicitor prepare a "Declaration of Trust" recording how the property is owned beneficially.

“Time for a
clean break”



Ideally you will put both names on the title deeds of any property and stipulate your shares in the property; if you do there can be no argument about your respective entitlements. If, however, the property remains in one name only, consider obtaining:

- a written declaration by the legal owner that they hold it “upon trust” for both of you together.
- make a “Cohabitation agreement”

The agreement sets out in writing how things will be divided in the event of a split, on terms agreed by both parties. As with pre-nuptial agreements, cohabitation contracts are not legally enforceable under British law. However, if a disagreement ends up in court, the contract can serve as evidence that a written agreement was made between the two parties, with the judge then having discretion over whether to support its terms or make their own decision.

Property

While married couples who divorce are legally entitled to make claims on each other’s property, the same rights do not apply to cohabittees.

The title deeds usually dictate who owns the property, and so generally speaking if your name is not on the deeds, it is presumed that you will have no share or interest in the property and will not be entitled to any money when it is sold.

What is more, if your name is not on the title deeds, then you will have no legal right to stay in the property if the relationship breaks down.

If you are not on the title deeds then proving that you own a share of the property can be very difficult. You will have to prove some agreement or understanding between you and your partner that you both intended that the ownership of the property should be shared, and that you have relied upon that agreement to your detriment – usually by spending money on the acquisition or significant improvement of the property, or by paying the mortgage directly.

Such claims are often only resolved by court proceedings and at great expense to both parties. The outcome is often uncertain and so court proceedings are obviously best avoided.

Similar difficulties can arise about the ownership of furniture and household contents, bank accounts, and gifts. Without any agreement in place, one partner can walk away from the relationship with all the savings and possessions they built up out of their own money. Where items were bought jointly it is often impossible to say who contributed what, and therefore to whom such items belong.

Court proceedings to resolve issues of ownership in relation to furniture and personal belongings are prohibitively expensive and usually not cost-effective.

If your partner dies

In keeping with the misconception of ‘common law marriage’, many people assume that everything will automatically pass on to them should their partner die, simply because they have lived together for long enough.

The reality, however, is quite different. If someone dies without leaving a Will, then their property and assets – known as their estate – will be distributed in accordance with the laws of intestacy. The intestacy provisions do not make any provision for cohabittees even if they have spent many years together. This means a cohabitee could suddenly find themselves facing the risk of being homeless if their partner owned the property, which would automatically pass to relatives who may decide to sell it.

The surviving partner can contest the Will by making a claim against the estate, but this can be a long and costly process at what will already be a very difficult time, and with no guarantee of success.

The answer is for each party to make a Will, clearly stating their wishes in the event of their death. If a Will is made, then the surviving partner may still be liable for any Inheritance Tax payable so seeking professional advice is essential to mitigate this liability. It should also be noted that surviving partners will not receive any state bereavement benefit or a state pension based on a percentage of the deceased’s National Insurance Contributions, as with married couples.

Provision for children

A relationship breakdown is likely to be a difficult and stressful time, regardless of whether a couple are married, in a civil partnership or cohabiting. Where children are involved, both parents will hopefully want to ensure that they reach a solution that is in the child’s best interests.

In circumstances where one partner owns the home and the parties have a child together the situation is different to that referred above. The parent caring for the child can apply to the court under Schedule 1 of the Children Act for financial provision, perhaps seeking a transfer of the property or maintenance payments for the child.

Such provisions rarely involves an outright transfer of property from one partner to the other for their own benefit. It may, however, give a child and the parent caring for him rights to occupy the home until the child grows up. Such provision is for the benefit of the child and therefore usually until the child reaches the age of 18.



Children

Any issues relating to children are dealt with under the Children Act, regardless of whether the parties are married or not. However, unmarried couples should consider formalising their arrangement, as fathers who have not jointly registered themselves with the mother on the child's birth certificate will not automatically have parental responsibility. They will, however, still have to pay child support if they separate from the child's mother.

The courts are unlikely to interfere in a voluntary arrangement, as the law considers that these are more likely to succeed than those imposed on the parties.

If you and your former partner cannot agree on arrangements for your children then it is worth considering mediation before resorting to court proceedings.

If matters cannot be agreed between the parties, it may be necessary to go to court to apply for a specific order, the most common of which are:

- a "Child Arrangements" Order: an order which records with whom a child is to live, spend time or otherwise have contact, and when a child is to live, spend time or otherwise have contact with any person.
- a "Prohibited Steps" Order: an order which prohibits an action by a parent in respect of the child, except with the consent of the court.
- a "Specific Issue" Order: an order which determines any specific question or issue affecting the child's welfare.
- a "Parental Responsibility" Order: an order which gives to a parent or some other person "parental responsibility" in respect of the child.

"Child Arrangements Orders" were introduced on 22 April 2014; until then the court could make:

- a "Residence" Order: an order which decided where the child should live and with whom; and
- a "Contact" Order: an order which required the person with whom the child lived, to allow the child to visit or stay with another person, or otherwise to have contact with that other person.

The terms "Residence" and "Contact" are no longer used and instead referred to as Child Arrangements Orders.

Any proceedings involving children are likely to be stressful and emotionally demanding, but your solicitor can help you by providing practical, professional advice designed to help you reach a solution that is in your children's best interests.

Even if you feel that you have no alternative but to go to court, the experience of a family solicitor may help to settle the problem before it goes that far. Consulting a family solicitor should assist the process of dealing with the breakdown of a relationship and its effect upon the children.

Contact us for advice

The specialist family team at our firm can assist you with all family-related issues including cohabitation.

Although helpful, the brief information included in this document is intended as a guide only and does not constitute legal advice. For more detailed information regarding any of the matters raised in this guide, tailored to suit your specific circumstances, please contact a member of Mander Hadley's family team.

