

# The Good Cohabitation Guide



The lack of legal protection for unmarried couples is never far from the spotlight, which is perhaps not surprising as it is estimated that there are approaching four million cohabiting couples in the UK.

## What are your rights?

### 'Common law marriage'

Unfortunately, a significant proportion of cohabittees believe they have rights similar to a married couple, particularly if they have lived together for many years or they have children together. But the concept of 'common law marriage' is total legal fiction. In reality, the law in England and Wales provides little protection for unmarried couples.

### Your partner's income and assets

As a cohabitee, if your relationship breaks down, you have no legal right to a share of your former partner's income or assets which are in their sole name. You may be able to establish a 'beneficial interest', for example, in the family home, but this is often far from straightforward. And if you disagree on what should happen to your home, whether it is owned jointly or in one partner's sole name, the law applied is complex, and such disputes can prove expensive.

### Children

Children are also a significant consideration, not just in terms of parenting issues such as which parent the child(ren) should live with, but also ensuring sufficient financial provision for them.

### What if one of you dies?

You should also consider that if the worst happens and one of you dies, what the other receives depends on how you own your property and what provision you have made for each other in your Wills, if you have made them.

## How can you protect yourselves?

### Get married?

Of course, the obvious answer is getting married or entering into a civil partnership. But for a whole variety of reasons, that may not be right or even possible for everyone, and most couples who do intend to marry eventually, cohabit beforehand.

And we should not overlook the fact that if one partner is in a stronger financial position than the other – perhaps one has a pension, and the other does not – they may feel they are better off not getting married.

### Cohabitation Agreement

Whether or not you are already living together, a formal, written cohabitation agreement allows you to detail what property and assets are owned by which person, and to set out clearly how they will be split in the event of your relationship breaking down. You can also decide how children will be supported.

However, you should note that a cohabitation agreement cannot provide for pensions to be shared on separation. Pensions can only be shared on divorce.

Some couples decide to use a cohabitation agreement to go further still, perhaps setting out how day-to-day finances will be managed during their relationship or naming each other next-of-kin.

But, it is important to remember that should you subsequently marry and then divorce, the court can make an order which is inconsistent with a prior

cohabitation agreement or declaration of trust (see below) if that is necessary to ensure fairness.

### How do you make a Cohabitation Agreement?

You can make a cohabitation agreement at any time, even if you have been living together for many years. Indeed, arguably it is even more important to do so if that is the case.

It is always best to have your cohabitation agreement drawn up professionally by a solicitor. They will also advise you on other steps you may need to take in order to protect yourself and your children, such as making Wills or drafting a declaration of trust in respect of your home.

Remember, entering into a cohabitation agreement is pragmatic, not unromantic! Most couples find reassurance in removing much of the uncertainty of cohabitation.

However, if you subsequently decide to marry, you should take legal advice beforehand as to whether a prenuptial agreement is recommended in place of your cohabitation agreement.

### Declaration of Trust

A declaration of trust is recommended if you and your partner own a property together. This is particularly important if you are contributing unequally in terms of the deposit, mortgage, or in other ways. It will set out your respective contributions and whether you will share the equity in similar disproportionate shares upon separation. A declaration of trust will also detail the agreed procedure if a disagreement arises concerning the sale of the property.

A declaration of trust can be particularly attractive to individuals being gifted family money who would like to ring-fence it for later return. Should you subsequently decide to marry, you should seek advice about entering into a prenuptial agreement to help ring-fence any gifts or inheritances as far as possible.

### The importance of Wills

One of the most significant problems of not being married or in a civil partnership is what happens if your partner dies without making a Will. You will inherit any jointly owned

property, perhaps your house or a joint bank account, but everything else will go to your partner's relatives in a legally established order of precedence.

In particular, you may not own your home jointly. Instead, it may be in one partner's sole name, perhaps because they already owned the property before you began to cohabit. Alternatively, you may own it as 'tenants in common' rather than as 'joint tenants'. This is relatively common if joint owners have contributed unequally to the purchase of the property. Owning as tenants in common means that your respective shares in the property will not automatically pass to the other on death. However, these issues can be dealt with very simply by making Wills.

### Pensions

If your partner has a pension, unless they have specifically nominated you to their pension company to receive the benefits on their death, you are unlikely to be entitled to any of their pension. Some pension companies will not allow benefits to be paid to unmarried partners even where a specific nomination has been made unless you can prove financial dependency or inter-dependency. Therefore, you must ensure that you each nominate the other to receive benefits under your pension in the event of your death.

Specifically, in respect of personal pensions, unmarried couples are often advised to each pay comparable sums into their pensions, rather than relying upon an assumption that they will benefit from the other's pension.



*To find out more about any of the issues raised above or any other Family Law matter, our Family Law team can be contacted on 01793*

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