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Your questions answered

COHABITATION

This guide explains what legal rights people have when they are cohabiting and how cohabiting couples can protect themselves should their relationship break down.

As the marriage rate in England and Wales continues to fall, the number of unmarried but cohabiting couples is on the rise. However, there is currently no law in England and Wales which recognises the needs of a cohabiting couple if their relationship breaks down, as there is with divorce. In the event of a property dispute, trust and land law is applied instead.

Common-law man and wife is a complete myth. If you are unmarried and live together you do not have the legal rights of a married couple.

As a result, following the breakdown of a relationship or the death of one party there are very different legal implications, sometimes creating a financial disaster for a dependent cohabitee.

Capital assets such as the family home are not divided as they might be in divorce and should a property dispute occur, trust and land law are applied instead.

There is no automatic entitlement to make financial, capital, spousal maintenance, or pension claims. There are laws concerning the children of cohabiting couples as there is no distinction between married and unmarried parents when deciding such issues as who the child (or children) will live with and how often they will see the other parent.

Cohabitation laws UK - need to know

The key legal difference between married and cohabiting couples is the financial provisions the court can make for the other party when they separate. These are much more limited for cohabiting couples.

What happens when a cohabiting couple separates?

Broadly speaking, the court will look at the intentions of the cohabiting couple splitting up in relation to any property you own.

It may be that there is written evidence showing how the couple agreed any property should be owned, for example. This could be in equal shares, in unequal shares; or one partner owning the property in its entirety.

If there is no written evidence, then the court will look at each party's actions and intentions. It is the person who asserts that the shared intention was different to how the property is owned on paper who has to prove to the court that this was the case, which can be very difficult to do.

Even if you contributed most of the deposit for the purchase of the property or you have paid all the mortgage instalments you would ordinarily only be entitled to half unless it was agreed otherwise, in writing.

Cohabiting couples separation rights (common law marriage)

Rights of cohabiting couples – here are steps you can take to protect your rights and those of your children in the event of separation, including:

Cohabitation agreements

One way is to draw together a cohabitation agreement that details, amongst other things, how property, capital and assets are owned and should be divided; arrangements for children; finances (mortgage and bank accounts) and next of kin.

To ensure that the cohabitation agreement covers these matters correctly and gives full legal effect, you should consult one of the family law specialists at Stowe. For example, if you are about to purchase a property with a partner it is essential that, before the sale takes place, ownership of that property is agreed and reflected in an appropriate declaration of trust.

As many people formerly in a cohabiting relationship have discovered to their cost, making claims about what may or may not have been agreed upon years before is unlikely to sway family courts without clear supporting evidence.

Making a Will

Whenever we assist our clients with cohabitation agreements at Stowe Family Law, we also make additional recommendations to safeguard our clients' assets and intentions. One of these we make to all cohabiting clients is that they make a will and insure their lives. The latter is especially important if you are a financial provider with dependents or other financial obligations.

Need more information?

Call our Client Care Team on **0330 838 7456** to speak with one of our specialist family lawyers or visit www.stowefamilylaw.co.uk

Declaration of Trust

Alternatively, consider a declaration of trust. This is a document that confirms the proportions in which two or more individuals own a property; for example, the amount of equity each party has or how it will be split should the relationship break down.

Unmarried couples rights – cohabitation, separation & custody

The law does not distinguish between married and cohabiting couples rights when determining with whom the children should live on separation and how much time the children should spend with the other parent. This is determined by what is in the best interests of the children rather than being linked to the status of the relationship.

Likewise, the non-resident parent will have to pay child support regardless of whether he or she was married to the other parent. This is usually dealt with by the Child Maintenance Service and not the courts (except in limited circumstances).

Cohabiting rights – financial provisions

The court can make additional financial provision for the parent who has care of the child, but this is unusual and only applies when the non-resident parent is wealthy. Even then, the provision is based on the parent's role as the child's carer and does not seek to share the assets as is the case with divorcing couples.

The purpose of this provision is to ensure the child or children's needs are met rather than for the benefit of the cohabitee and so this would almost always come to an end when the child is no longer a minor.



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