



Act Family Law provides this guide as general information, we hope you find it helpful. It is not intended to replace legal advice. Each case has different issues and requires separate individual advice.

Act is not liable for any consequences if you rely on these notes rather than seeking specific guidance on your own case.

COHABITATION

Introduction

Contrary to what is often believed, there is no such thing as “common law marriage”, and cohabitees have no automatic rights against, or responsibilities for, a person they live with, whether they are the same sex as their partner or not.

Married couples, or civil partners, have a body of law which gives them rights to make claims against each other, and which allows the court to redistribute their property between them on divorce. Cohabitees have no such equivalent law, and if their relationship breaks down, they each keep the assets in their respective names. The length of the relationship is irrelevant. A woman who lives with a man for 20 years does not thereby build up any right to remain in his house if the relationship breaks down.

If a couple have a child, that may give rise to certain claims for the benefit of the child, and therefore indirectly potentially benefiting the parent they live with, because the law does allow for financial provision for a child whether or not the parents were married.

Cohabitation agreements.

Cohabitees can draw up binding agreements to clarify what they each own, and what they will be entitled to in the event that they separate, or if one of them dies. This may sound, and in some ways is, unromantic and not what people want to think about at the beginning of a new relationship.

However, given the lack of law to resolve issues if problems arise, it is much better to consider your position at the beginning, when you are both still keen to make the relationship work and are motivated to work out the issues involved, rather than after

an acrimonious parting. By making clear decisions at the outset, many of the disputes that might arise later can be avoided.

Drawing up an agreement with a solicitor will also prompt you to consider issues which you might not otherwise have thought about, like how you want to share responsibility for loans and debts, how property is to be purchased, paid for and maintained, and how to organise pensions to protect yourselves and each other.

Property.

A property belongs to the person who is registered as owning it. Particular problems can arise if one person is registered as the owner, and living costs are then shared by the owner paying the mortgage, and the other person paying for food and other living expenses. Although their contribution may be as much, or indeed greater, in financial terms, the non-owner will not be entitled to share in the value of the property, and can be asked to leave at any time by the owner.

A cohabitee does not even have the same rights as a tenant in rented accommodation. In limited circumstances, a cohabitee may be able to bring a claim against property which is not in their name to which they contributed substantially, or in some other limited circumstances, but such claims can be complicated and difficult. The odds are very much in favour of the owner. The court has no power to give someone a share just because it seems morally right to do so: property law is about ownership, not doing what seems fair.

Maintenance.

A cohabitee has no right to claim maintenance from their former partner in any circumstance.

Children

If there are children born to a couple, a separated partner can seek maintenance for their children living with them through the CSA, and may be able to make other applications to benefit the children under Schedule 1 of the Children Act (generally relevant with wealthier individuals) for maintenance and lump sums. A former partner has no duty to support a child who is not their biological child (for example, the child of the other partner's previous marriage or relationship) even if that child lived with them as part of a family.

Death

A cohabitee is not treated in law as “next of kin” and so unless the deceased made provision for them by will, the survivor will not be automatically entitled to anything from their Estate, nor will they be entitled to remain in the house if it was owned by the deceased.

If the couple had lived together for at least 2 years prior to the death, and if the survivor was being supported by the deceased, it may be possible to make a claim against the Estate under the Inheritance (Provision for Family and Dependents) Act.

Any child of the couple will have a potential claim against their parent’s Estate.

Tax

Cohabitees are treated as unrelated for tax purposes. Cohabitees have no exemptions from inheritance tax that a married couple would have.

Summary.

There are many misconceptions and misunderstandings about the law relating to unmarried couples. Whether or not you choose to have a Cohabitation Agreement, it is advisable to take legal advice early in a relationship so that you know what your legal position is and what rights, if any, you may have. If you have particular issues you wish to resolve, you can find out how those may be addressed to compensate for the lack of provision under the general law.

If you have separated, or think your relationship is breaking down, taking early advice will help you understand what your rights are, and what you may be able to do to protect your position where that is possible.

If you have a potential claim against property, it can be important to take steps urgently to protect your rights before the property is sold or mortgaged, or before assets are dissipated.