

Cohabitation Fact Sheet

Despite general public perception, there is no such thing as a “Common Law spouse”. If you live together with your partner but are not married/formed a Civil Partnership then your rights and obligations relating to property, children and maintenance are very different compared to couples who have undertaken a formal Ceremony. This can often lead to situations which, in the general sense, seem very unfair.

Society has changed extensively over the years and the trend is that more and more couples are living together. According to the National Statistics Office, between 1996 and 2004 the number of cohabiting couple families increased by over fifty per cent. The Civil Partnership Act, which came into force in December 2005, has enabled same sex couples to register their relationship and create what is known as a Civil Partnership. (See Civil Partnership Fact Sheet). Civil Partnerships bring with it certain rights which are similar to those of a Married couple. However, what about those who live together but are neither Married nor have entered into a Civil Partnership?

The Law as it currently stands, often leads to injustices for such cohabiting couples when they subsequently separate, or should their partner die, compared with the rights afforded to a husband/wife or a Civil Partner. Instead, disputes arising between cohabitants involve complex Property/Trust Law which often results in significant legal costs and is inadequate when dealing with the dynamics of a separating couple, especially where they have children of the relationship. For instance, the Court has to look at factors such as the common intentions of the parties and their contributions.

Unfortunately, a cohabitant who contributes to the home by looking after the children of the relationship and/or contributes to the outgoings of the family exclusive of the mortgage is unlikely to be able to claim an interest in the family home for this reason alone if it is registered in his/her partner's sole name and in the absence of the cohabitant who owns the property making a clear statement to the other that half their home belongs to them. If these circumstances exist however when couples are Married or are Civil Partners, a Judge would have a wide discretion and be able to take into account what would be fair and reasonable in each couples situation when deciding any appropriate financial settlement.

The Law affecting cohabitation is a highly complicated area and it is important that you seek legal advice when contemplating moving in with your partner, certainly if any difficulties arise.