

Cohabitant agreements: giving unmarried couples rights

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It is an unfair fact of life, but in the eyes of the law a married couple has far more protection than a cohabiting, unmarried partnership.

Even if you have spent years jointly contributing to the running of a house, splitting the mortgage between you, have children together or have been living with each other for decades, the loss of a partner could change everything.

If the relationship ends either through separation or bereavement, unmarried cohabiting couples do not have the same or similar rights as married couples. Nor do they have the same rights as those living in civil partnerships. Both heterosexual and same-sex couples are vulnerable if they don't have that piece of paper saying that the state recognises their relationship in law.

So how can an unmarried couple protect themselves if they don't want to get married or are ineligible for a civil partnership? The best way is to draw up a cohabitant agreement.

What is a cohabitant agreement?

A cohabitant agreement is very similar to a pre-nuptial agreement. It is a document that clearly lays down exactly who owns what, property rights and arrangements, the care of any children and how debts are dealt with if one of the couple either passes on or leaves the relationship. It is usually signed by both partners and notarised by a solicitor.

This doesn't, however, make it a legally binding document. Just like pre-nuptial agreements, cohabitant agreements are exactly what they say they are – agreements. It lays out the expressed wishes of the couple should the relationship break down or should a

partner die, but if the next of kin do not agree with the terms of the agreement then it can be easily challenged in court.

In most cases, as long as the welfare of any children is not impacted, the courts will recognise a cohabitant agreement and are unlikely to interfere, especially if most of the document deals with financial or property arrangements. The courts can rule to enforce a cohabitant agreement, but the document itself is not technically legally binding. We would also recommend that you make wills to provide for each other.

Surely the fact I'm a common-law spouse is enough?

The term 'common law' when used about relationships is a misnomer. It is certainly a well-known phrase, but it is not recognised in law, and as far as the courts are concerned there's no formal or recognised 'common law' relationship, even if you've been together for years.

What happens if you don't have an agreement?

If you're unmarried but in a long-term relationship with someone and don't have a cohabitant agreement, then the death of a partner can be particularly traumatic. Without an agreement there is no provision in law for the remaining partner to inherit any of their deceased partner's estate. A surviving partner is not exempt from Inheritance Tax, either, something a married or civil partnership couple have.

To be able to receive anything at all from the deceased person's estate, the surviving partner would have to go to court to prove that they co-owned assets – everything from the car, the house, or even the TV. In short, without some form of legal protection, surviving co-habitant partners could be left with nothing.

What should go into a cohabitant agreement?

Just like any formal agreement, they should be as detailed as possible. If you are not sure, then you should talk to a family law solicitor, like [James McMullan](#), who will be able to help you draw up an agreement that could protect you both.

Your agreement should include:

- a statement of intent – explaining exactly the nature of the agreement;
- personal details and a full disclosure of your financial assets including inheritance and wills;
- how any possessions/financial assets or property should be dealt with;

- income and expenses – whether finances are covered in a joint agreement or kept separate, and whether one partner will support the other should they stop working or be unable to work;
- clear arrangements concerning children, including their educational needs; and
- mortgage payments on any joint-owned property and who pays what if the couple separate.

Other clauses can be included as there is no formal template for a cohabitant agreement. Therefore, it is important to get good legal advice before drawing up any agreement that could be challenged in a court of law.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

