



COHABITATION FACT SHEET

Introduction:

Increasingly more and more people are choosing to cohabit rather than marry or enter into a civil partnership. It is estimated that cohabiting heterosexual couples now make up 14% of all partnerships compared to just 5% in 1986.

There are a number of myths surrounding cohabitation:

- There is no such thing as common law marriage
- That if people cohabit for a certain length of time this entitles them to have rights in the other's property. This is not true, cohabiting couples do not automatically have any rights in the other's property simply by living with them.

Cohabitation Agreements:

We would advise any couple who are contemplating living together to consider entering into a cohabitation agreement, which is a document setting out the agreements between the parties and what they intend their rights to be.

It is important for both parties to obtain independent legal advice before entering into a cohabitation agreement. Both parties need to understand that they will be legally bound by the agreement and they must both fully be aware of the one and others financial and other circumstances.

Cohabitation Agreements become void upon marriage.

What are the contents of a Cohabitation Agreement?

The agreement can include anything the couple want, but will usually include the following:

- Who owns the property in which the couple are to live. If both parties own it then the agreement should state in what shares they own it. If only one party owns the property, then it will state if the other party has an interest in it.
- Who is to pay for the outgoings on the property and what effect this will have (if any) on other agreements reached.
- Who will undertake to maintain the property, and how it will be paid for.
- What each party own and what they are bringing to the relationship.
- Who owns the contents of the property.
- Arrangements for any children.

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- What will happen if the relationship ends and cohabitation ceases.

Cohabitation Disputes:

There is no legal process that cohabitants can go through like Divorce or ancillary relief for married couples/civil partners. The Courts cannot therefore intervene to make Orders like they can when a married couple Divorce, except in relation to property and Children.

Neither party has a right to claim any maintenance from the other, only maintenance for the children, which is dealt with by the Child Support Agency.

Unlike married couples/civil partners, cohabiting couples do not have a legal claim against anything owned by the other, unless they can prove that they have an interest in it.

Property in Joint Names:

If the property is held in joint names then either can apply to the Court to force sale of the property under the Trusts of Land and Appointment of Trustees Act 1996.

If the couple purchased the property as joint tenants, then all proceeds of sale will be split equally between the parties, unless there is a dispute and the tenancy has been severed.

If the couple purchases the property as tenants in common then one party can buy the other out. If there is no declaration as to how the couple owns the property then under the Trust of Land and Appointments of Trustees Act it will usually be presumed that each party's interest is equal to their initial contributions, or if the tenancy has been severed that they own equal shares.

Property solely owned by one party:

If neither party can reach an agreement as to whether the non-owner is entitled to a share in the property then it is up to the non-owner to apply to the Court under the Trust of Land and Appointments of Trustee Act and it is up to them to prove that they have a beneficial interest in the property. This can be done by either:

- Providing evidence of an agreement that the property is shared and that the non-owner has acted to their detriment in reliance on this agreement, or
- Proving that by the conduct of the parties it is clear that there is a common intention to share the property beneficially.

If the interest of the non-owner can be proved, then it will be a matter of proving the extent of that interest. To do this the non-owner will have to show what has been contributed to the property financially or in other ways.

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If someone does not have any interest in the property then they will have no right to remain there, unless one of the following can be proved:

- That the owner has granted the other party a licence to remain living there.
- That the property is needed to provide a home for the children of the family
- That one party needs to remain living there in order to protect them, or their children, from violence from the other party. Please see our Domestic Violence Fact Sheet.

Applications to the Court under Trust of Land and Appointment of Trustees Act 1996:

The application is made to the Court with a supporting sworn statement. There is a Court Fee to be paid with the application. The Defendant will then choose whether they want to defend the application.

If the application is defended then there will be a hearing before a Judge who will usually give directions as to how the case will progress. This usually involves obtaining house valuations and statements being ordered.

If an agreement cannot be reached then there will be a full hearing with both parties giving evidence and can last a day or even more. At this hearing the Court will make their decision in the form of an Order.

Parties are encouraged to reach an agreement and the cost of litigation can be very expensive.

These type of applications can usually take up to six months or may be longer depending upon the complexities of the issues involved, and the cooperation and willingness of both parties to negotiate.

Separation Agreement:

If both parties reach an agreement without the need for a Court Application, then we would advise them to enter into a separation agreement, which is a document setting out in writing what the agreement is. Each party would need to obtain independent legal advice in relation to the contents of the separation agreement.

If a couple decide to separate, a separation agreement will not prevent them from reconciling. However, the separation agreement will usually become void if the couple live together for a period of more than six months.

Both parties need to understand that they will usually be bound by the contents of the separation agreement and they must be fully aware of each other's financial and other circumstances.

Contents of a Separation Agreement

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The agreement can include anything the couple want, but will usually include the following:

- A statement that the parties intend to live apart from one another
- How the assets are to be divided
- What is going to happen to the property where the couple live
- How the debts are to be divided
- How the contents are to be divided
- Financial arrangements for the children
- Residence and contact arrangements for the children
- Any other financial arrangements

If both parties are in agreement to the contents of the agreement then it will only take a few weeks to draft the document whilst ensuring that both parties have independent legal advice. Matters can take a lot longer if negotiating needs to take place.

Please note that this fact sheet should be used as a general guide only. The advices given do not relate to special circumstances and we strongly recommend that you make an appointment to see us.

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