



COHABITATION DISPUTES

Both parties may have entered into a Cohabitation Agreement to attempt to avoid an acrimonious and upsetting situation should the relationship break down. However most people generally do not believe that their relationships will come to an end and, not unnaturally, are reluctant to dwell on this possibility.

Unfortunately at present the law in relation to cohabitation is not clear. Although the government has considered implementing specific legal provisions in respect of cohabiting couples, as yet this has not been done. The parties may have put into place a Cohabitation Agreement setting out their intentions which can help to avoid or reduce difficulties on the breakdown of a relationship. However this is a complex area of law and the parties should seek legal advice to assist in any potential claims over property, inheritance or children.

It is extremely important that the parties seek the advice of an experienced Family Solicitor to represent their best interests and to ensure that a fair settlement and outcome is achieved.

What does the term 'Common Law Wife' mean?

This term does not exist under the law of

England and Wales and therefore there is no such person as a 'Common Law Wife'. Although the law provides a number of financial remedies upon divorce or the dissolution of a civil partnership, the same rights are not available to cohabiting couples.

If a person lives in their partner's house for any period of time are they automatically entitled to a share in the house?

No. There is no period of time that automatically gives the non-owning partner a share in the property. However if the non-owning partner has made financial or

other contributions towards the property then they may, in some circumstances acquire a financial interest. This is by no means a certainty and is an extremely complex area of the law in respect of which expert legal advice is strongly recommended.

What share are cohabitees entitled to where a property is jointly owned?

This will depend upon many factors, but the starting point will be the title documents which are held at the Land Registry. There are two ways of jointly owning property:

||| Joint tenants - both parties own the





whole of the property and will be entitled to an equal share of the proceeds when it is sold.

- III Tenants in common - it is possible to specify the precise shares that each person will own. These may be equal or in any other proportion, perhaps reflecting the contributions made to the purchase price.

In some circumstances it may be possible for a party to assert that they should be entitled to more than is reflected in the title documents, however this is a complicated and developing area of law and expert legal advice is strongly recommended.

Do Cohabitees have to pay maintenance for their partners upon separation?

No. There is no legal obligation for a cohabitee to pay maintenance for their partner. There can however be financial implications with regard to joint liabilities and property and it is recommended that legal advice is taken on this point.

Does the absent parent have to pay maintenance for their children?

Generally speaking - yes. It is obviously preferable and more amicable if the parties are able to agree the level of child maintenance to be paid. Solicitors can assist in this process to try to avoid the parties arguing about the amount to be paid. However if the parties are not able to agree then an application for child maintenance can be made to the Child Support Agency. *(please note that these provisions are in the process of being reviewed and updated).*

Will a person benefit from their partner's pension on the death of that partner?

The answer is generally - no. A person may however be able to claim a dependant's pension if their partner dies before them. Again it is strongly recommended that expert legal advice is sought on this issue.

If one partner dies can the surviving partner have a share in the estate?

If the deceased has not made a Will then the surviving Partner will not automatically inherit anything from the estate.

Obtaining a share in an estate will depend upon the terms of any Will which is in existence. However a surviving partner may have a claim for financial support from the

estate and it is therefore very important that the surviving partner seeks legal advice at the earliest opportunity to establish their position.

This Guide contains summaries of complicated issues and should not be relied upon in relation to specific matters. You are advised to take legal advice on particular problems.

**For further assistance, please contact Mary Kaye, Partner & Head of the Family Law Team on
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