

## Cohabitation Family

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Here is some basic information concerning the rights of separating cohabitants who do not have a Cohabitation Agreement. Each set of personal circumstances vary, so professional advice is essential to protect your respective positions.

The best way to protect your future interests as a cohabitee is to have a Cohabitation Agreement in place from the start.(see below).

### **Claiming Maintenance**

A cohabitant cannot claim maintenance from a former partner. The “common law wife” has no such rights other than to pursue an application for income and capital for any child from their relationship.

### **Dividing property**

While the Divorce Court has extensive powers to adjust the ownership of capital assets the Court has much less flexibility in the case of cohabitants. If property or assets are in the sole name of one former partner the assumption is that those assets belong to that individual. However if it can be shown that the other person has made a substantial contribution towards the purchase or maintenance of a property, the Court may decide that they have acquired an interest in it. It’s a complicated legal area and can be expensive to resolve.

### **Inheriting on death**

Should your cohabitation partner die none of the property or assets will automatically go to you. So if you or your partner has specific wishes, it is best to have a will drawn up to ensure those wishes are carried out. Remember too that inheritance tax is payable out of the estate over the relevant limit for an individual, whereas in the case of a married couple additional tax relief is allowable.

The surviving partner of a cohabiting couple has no absolute right to the deceased’s pension either. The best that can be achieved is for each to name the other as the person to benefit under the terms of the pension scheme, if that is possible.

Finally any assets or belongings usually belong to whoever paid for them, so that the other person will not have any claim, unless he or she can establish that the item was given to him or her as a present. Where belongings are purchased from joint funds, the assumption is that the property is jointly owned.

### **Benefits of a Cohabitation Agreement**

The best way of ensuring that there are no arguments should a relationship end is to draw up a Cohabitation Agreement before you start living together.

A Cohabitation Agreement can deal with income, capital, property, personal effects, as well as provision after death. It helps prevent arguments should a couple separate which saves both time and legal costs. Provided both parties have had independent legal advice and full financial disclosure has been made before cohabitation starts, the chances are that the Court will uphold the agreement. There is no reason why a Separation Agreement can’t be drawn up after the relationship has broken down which determines the basis on which the couple are separating.