

Palmerslaw

Common law spouses:
is there such a thing?

Your guide to living together and your rights

Moving forward
together >



An increasing number of couples choose to live together without getting married or entering a civil partnership.

In legal terms this is referred to as 'cohabitation'. The latest figures show that in 2021, the number of cohabiting couples is now over 3.4 million, compared with just 1.5 million in 1996. However, despite this UK law has, arguably, not kept pace with our changing way of living.

You may be surprised to learn that cohabitating couples have far less rights than couples who are married or in a civil partnership.

This guide aims to debunk some of the common myths and misconceptions. We outline your rights and we also explain the importance of having a legal document drawn up, known as a 'cohabitation agreement'.



What legal rights do I have as a cohabitee?

Many people believe that if they live together for long enough, they will automatically become 'common law husband and wife' and therefore enjoy the same rights as married couples or civil partners.

This is a myth. As far as the law is concerned, there has been no such thing as common law marriage in England and Wales since 1753!

This means that unmarried couples who live together do not enjoy the same legal recognition as married couples or civil partners – although they often do not realise this until a relationship breaks down.

This lack of rights is not just restricted to relationship breakdowns.

If one partner dies without leaving a Will, then the other partner will have no automatic claim on their estate. Making a Will is an obvious step, but for those wanting to ensure they are protected as fully as possible during both partners' lifetimes, drawing up a cohabitation agreement is a sensible option.

The agreement sets out in writing how things will be divided in the event of a split, on terms which are agreed by both parties.

As with pre-nuptial agreements, cohabitation contracts are not legally enforceable under British law. However, if a disagreement ends up in court, the contract can serve as evidence that a written agreement was made between the two parties, with the judge then having discretion over whether to support its terms or make their own decision.

What are your property rights if the relationship breaks down?

While married couples who divorce are legally entitled to make claims on each other's property, the same rights do not apply to cohabittees.

If this is not possible then mediation may be an option. In the worst case scenario, a property dispute will have to be resolved by a court.

If one partner owns a home and the couple split up without having an agreement in place, then the other partner will have no legal right to stay in that property. The other partner will need to prove that they have a beneficial interest in the property.

This can often be difficult and is usually established by proving that the other partner has contributed to the deposit of the property, the mortgage or helped paid for any work that has increased the value of the property.

The same applies with rented properties where only one partner has their name on the tenancy agreement.

This is why, when buying or renting a house together, it is worth considering putting both partners' names on the tenancy or mortgage agreement.

Alternatively, you can set out your intentions in a cohabitation agreement, which not only covers the property but also any possessions such as furniture.

As you can see, the law relating to disputes over property can be complex when you are cohabiting which is why it is important to seek independent legal advice.

What happens if your partner dies?

In keeping with the misconception of common law marriage, many people assume that everything will automatically pass to them, in the event that their partner dies, simply because they have lived together for long enough.

This is another myth.

The reality, is that if someone dies without leaving a Will, then their property and assets – known as their ‘estate’ – will be distributed according to the laws of intestacy.

Under intestacy rules, there is no provision whatsoever for cohabittees, even if they have spent many years together.

This means a cohabitee could suddenly find themselves homeless if their partner owned the property, which would on intestacy pass on to relatives who may decide to sell it.

The surviving partner can contest the intestacy provisions by making a claim against the estate, but this can be a long and costly process at an already very difficult time, with no guarantee of success.

The answer is for each party to make a Will, clearly stating their wishes in the event of their death.

If a person’s estate exceeds the Inheritance Tax threshold (currently £325, 000,) their estate may be liable for Inheritance Tax, so seeking professional advice is essential as there are options that may help to reduce this tax liability.

You also need to be aware that, unlike married couples, surviving partners do not receive any state bereavement benefit or a state pension based on a percentage of your deceased partner’s National Insurance Contributions.

What happens to your children if your relationship breaks down?

Any relationship breakdown is likely to be a difficult and stressful time – regardless of whether a couple are married, in a civil partnership or cohabiting.

Where children are involved, care must be taken by both parents to ensure that they reach a solution that is in the child's best interests.

Any issues relating to children are dealt with under the Children Act, whether the parents are married or not.

For example, where one partner owns the home and the cohabiting couple have a child together the rules are slightly different to those referred to earlier in this guide.

The partner who does not own the property can apply to the court (under schedule 1 of the Children Act) for provision, either by seeking a transfer of the property or for maintenance payments.

Such a provision is for the benefit of the child and therefore exists only until the child reaches the age of 18.

Despite the additional protection, unmarried couples should still consider formalising their arrangement in respect of the ownership of their home.



Next steps...

At Palmers Solicitors, our expert, friendly Family Law team can help you draw up a cohabitation agreement and put in place a Will for both you and your partner.

In the event that you need legal support because your relationship has broken down or your partner has died, we are here to help and guide you every step of the way.



Eleasha Mirza

Paralegal
Basildon & Thurrock

☎ 01268 240000
✉ EleashaMirza@palmerslaw.co.uk



Farah Mahfooz

Solicitor
Basildon

☎ 01268 240000
✉ FarahMahfooz@palmerslaw.co.uk



Karen Bishop

Head of Family Department
South Woodham Ferrers

☎ 01245 322111
✉ KarenBishop@palmerslaw.co.uk



Leanne Livingstone

Executive
Thurrock

☎ 01375 484444
✉ LeanneLivingstone@palmerslaw.co.uk



Rumi Begum

Solicitor
Thurrock

☎ 01375 484444
✉ RumiBegum@palmerslaw.co.uk



Sarah Dowie

Senior Associate
Rayleigh

☎ 01268 988488
✉ SarahDowie@palmerslaw.co.uk



Venessa Appiah-Nuamah

Solicitor
Rayleigh

☎ 01268 988488
✉ VenessaAN@palmerslaw.co.uk

Palmerslaw

Basildon

19 Town Square,
Basildon,
Essex, SS14 1BD

☎ 01268 240000

Rayleigh

105 High Street,
Rayleigh,
Essex, SS6 7QA

☎ 01268 988488

South Woodham Ferrers

Prospect House, 1/3 Brickfields Road,
South Woodham Ferrers,
Chelmsford, Essex, CM3 5XB

☎ 01245 322111

Thurrock

Ascension Chambers,
Fleming Road, Chafford Hundred,
Grays, Essex, RM16 6HH

☎ 01375 484444

Commercial Hub

Suite 1A, Phoenix House,
Christopher Martin Road,
Basildon, Essex, SS14 3EZ

☎ 01268 240000

www.palmerslaw.co.uk enquiries@palmerslaw.co.uk



Palmers Solicitors is the trading name of Palmers Law Limited (company registration England & Wales: 09464224) registered office 19 Town Square, Basildon, Essex SS14 1BD and is authorised & regulated by the Solicitors Regulation Authority, SRA No. 813805

This guide is not intended to be an exhaustive statement of the law and gives general information only. You should not rely on it as legal advice. We do not accept liability to anyone who does rely on its contents. This guide was correct at time of publication (September 2021) and is not a substitute for legal advice.

