



Are you unmarried and living with a partner?

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I am often asked about what your rights are when you live with someone but are not married. It's a good question as your rights as **cohabiters** are very different to that of a **married couple**, despite the age-old myth about "**common-law wife/husband**". When a **married couple** divorces, a court of law can share out assets and order maintenance in the way it considers fair. This is not the case for **unmarried couples**, and the entitlement on the **breakdown of the relationship** or **death** could be very different from what was expected.

There are also significant differences with regard to **rights of inheritance**, exemptions from **inheritance tax** and **pensions**. Here's what you need to know:

Is there such a thing as common law wife/husband?

Whilst it is a phrase commonly used, it has absolutely no legal recognition. So, just because you have lived together for numerous years it does not mean that the courts will treat you like you are **married** if you separate, that's a myth.



What will happen to the house if we separate?

If you rent your home with your partner and he or she asks you to leave following your separation, you will have no rights to stay in the property if the lease is in their name. The situation is exactly the same where your partner owns your home as, unless you have some of proof that you are entitled to a share, you will have no legal rights to remain in the property or to share in any sale proceeds.

What about our children?

There is little distinction drawn between **married** and **unmarried couples** when it comes to **children** on a separation. Where you separate from your partner and cannot agree the **arrangements for your children**, it may ultimately be necessary to seek the intervention of the courts. The orders that the courts can then make are the same regardless of whether you are married or not, namely:

- Residence Order
- Contact Order
- Prohibited Steps Order
- Specific Issue Order

Will my partner have to pay maintenance if we separate?

If you have children with your ex-partner, he or she will have to pay **maintenance** in exactly the same way as they would if you were married. However, unlike the situation with **married couples**, there is no entitlement to spousal maintenance.

What if my partner dies?

When one half of a **married couple** dies the surviving partner **automatically inherits** their share of the matrimonial assets. However, this is not the case with **unmarried couples** as, unless your partner has made a **will**, you will not automatically inherit anything in the event of their death.

You will also receive no **state bereavement benefit** or a **state pension** based on a percentage of their **National Insurance** contributions as a husband or wife would. Furthermore, anything you do **inherit** through your **partner's will** will be subject to **inheritance tax** if it totals more than the current £325,000 threshold, as **spousal exemption** will not apply.

Notwithstanding the above we do have a piece of legislation called "**The Inheritance (Provision for Family and Dependents) Act 1975**". This provides that if your partner dies **intestate**, or if his/her **will** fails to make any or adequate provision for you, you may be able to bring a claim for reasonable financial provision. You must have been living together for at least two years before death and be dependent upon the deceased.

The other potential point to consider is whether your partner has an **occupational pension scheme** as this may make provision for

the payment of an adult dependant's in the event of death after retirement if there is no legal widow/er at the date of death. Where death occurs during employment a lump sum may be payable and/or contributions to the pension refunded. Again these may be provided to a **cohabitee** upon a "nomination" under the scheme being made to the managers or trustees of the scheme.

My advice to cohabitees

Given the total disregard that the law has for **cohabitees** it is always worth **unmarried couples** entering into a **cohabitation agreement**, so that there is a written agreement that records who owns what and in what proportion, how you will split your property, its contents, personal belongings, savings and other assets should the relationship break down and how you will support your children if applicable.

For further information on **cohabitees** rights or any other legal or consumer matter visit [Dean's website](#).

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