

LIVING TOGETHER OR ABOUT TO MOVE IN? - WHAT YOU NEED TO KNOW!

ADVICE NOTE

Unlike married couples, or those who have entered into a Civil Partnership, there is no particular law which provides specific rights to co-habitants. Co-habitants are two people living together as a couple, whether of the opposite sex or of the same sex, but who are unmarried or not Civil Partners. Their position on the breakdown of a relationship is quite different, even if they have spent many years in the relationship. The legal rights of couples living together arise from a complex and often overlapping set of separate laws relating to trusts, property and children.

Couples parting after living together often find themselves in a legal minefield, and specialist legal advice is essential to enable you to get through successfully.

Couples considering setting up home together or already living together ought to consider putting measures in place that could minimise any scope for disagreement, or protect their respective positions should the relationship break down. This could be done, for instance, by way of a co-habitation contract.

Getting fully informed about your position is the essential first step. Some common misconceptions about the position of co-habitants include:

'It's different for me because I'm a common-law spouse'

Wrong! This is perhaps the most dangerous of myths about co-habitation. The duration of your co-habitation will not affect your status under the current law, which can have a devastating effect if the relationship breaks down, particularly for any partner who has become financially dependent on the other, or who has ongoing commitments for children from the relationship.

It is, therefore, vital that you seek advice on the range of legal mechanisms available to ensure that your position or the position of any children can be protected as much as possible in the event of your relationship breaking down. You should explore what remedies might exist if you are unfortunate enough to be in this situation - especially if there are children involved.

'If I have no rights, there's no point in doing anything'

The very fact that there is no law equivalent to that which governs the rights of married couples, or those in a Civil Partnership, is what makes seeking advice all the more important. There are a range of different legal options which could assist you to ensure there is adequate protection for you on separation or after the death of your partner. Such options could protect your position with regards to property, and you will need guidance as to how best to take care of your intentions, for example via a co-habitation contract or Will, and to ensure that any such contract is effectively drafted.

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'As long as I keep my house in my name my partner can't touch it'

Regardless of the strict legal ownership of a property, it is possible for a co-habitee to gain a financial interest in their partner's property in a number of ways as a result of financial or other significant contributions. By the same token, making some financial contribution does not guarantee you have acquired any interest. The reason for this apparent contradiction is that the law of property and trusts - which is what co-habitants must rely on - is extremely complex and is evolving through cases coming before the higher Courts all the time. You should seek careful advice and guidance to enable you to plan for how property will pass on the breakdown of a relationship, or as to what your legal position might be if your partner were to die.

I can save money and just download a contract off the Internet

You could, but it should come with a health warning. Any contract must be carefully drafted. This is even more important when dealing with contracts between couples, because certain considerations arise which must be appropriately catered for within the contract. A poorly drafted, or general agreement may have little use if you ever need to rely on it or enforce it. This, in turn, could create disputes or even litigation that might have been avoided if you had taken proper legal advice beforehand. In addition, each case is very different and a tailored approach will always be preferable.

The law is about to change soon, anyway

It is unlikely to change any time soon. The Law Commission reported in 2007 with recommendations to improve the position of co-habitants, but the report has been shelved pending the outcome of similar recommendations being put into force in Scotland. A private member's bill is in progress, but many commentators believe this will not be passed into law. The best advice is not to wait and see - you might have to wait some time!

Think you might need our advice?

We offer an introductory fixed-fee interview for half an hour for £60 including VAT. This comes with no-strings, so if any of the above applies to you why not invest this money to ensure you are fully informed about your position? After all, it's about the same price as a meal for two - and, whilst doing so might not be romantic, it's certainly less stressful than picking up the pieces if it all goes wrong.

The Downs team of family lawyers can provide you with the necessary specialist and sensitive legal advice, depending on whether you are parting, already living together or about to move in:

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