

Cohabitation Agreements or “no nups”



What rights do common-law husbands/wives have?

There is a common misconception that unmarried couples obtain certain rights and privileges when they become a “common law wife or husband”. The truth is that this term “common law” means absolutely nothing in today’s world. As the law stands no matter how long you have been together, you will not have the same rights as a married couple. An unmarried partner will have no right to maintenance or their partner’s pension. Furthermore there is no automatic inheritance should your partner pass away before you, unless they have made a will.

What is a Cohabitation Agreement?

More and more people are choosing not to marry, but make a commitment to live together and buy a property. A Cohabitation Agreement is designed to make parties think about their financial positions and their wishes. The agreement is a written document that sets out the parties’ intentions and states that they wish to be bound by its terms. These types of agreements are useful for any couple who do not intent to get married or enter into a civil partnership. The document should detail who owns what and what would happen if the relationship ends. The couple should try and be as specific as possible as to what their intentions are. The document should answer questions like “what if one party puts in more money than the other?” If the couple separates should the property be sold or can one party buy the other out? Couples should also give consideration to maintenance and improvements to the property and whether this should impact on their respective shares in the future.

Other issues to be considered include joint debts, personal possessions, cars and even arrangements about children. This is not an exhaustive list and each couple’s personal set of circumstances should be discussed with their legal adviser.

We appreciate that if you wish to consider entering into such an agreement it could prove difficult to have that conversation with your partner. However unromantic the conversation is, we would say that it is necessary.

Do I still need this agreement if I own the property in my sole name?

Cohabitation agreements are particularly useful for someone who already owns their own property or who is about to buy a property in their sole name and then have their partner move in. The owning partner needs to consider his or her position very carefully. We often find that following the breakup of the relationship, the non-owner partner tries to argue that he or she should have a share in the property. This is obviously very distressing and difficult for the partner who owns the house. Often the non-owning partner will argue that they have acquired this interest because they have made substantial financial contributions towards to the house. The courts often have to look at the intentions of the parties. Did they consider it “their house”. A Cohabitation agreement clearly sets out the parties’ position often stating different shares in the property.

Is the agreement binding?

If the agreement is drawn up correctly then it is a contract between the couple. The agreement should state that both

parties intend to be bound by its terms. Ideally both parties should have obtained legal advice and the document itself be signed and witnessed as a Deed.

Is a Cohabitation Agreement for life?

The short answer to this is no. It is advisable to review the cohabitation agreement approximately every five years or upon a change of circumstance for example the birth of a child. Furthermore if the parties marry, the document could potentially be considered in future divorce proceedings.

What happens when it all goes horribly wrong...

We have to be realistic and recognise that relationships do end. Despite best intentions relations can become fraught and parties sometimes cannot communicate and settle their own problems.

Co-habitation agreements are still fairly new and therefore many couples may not have made any written agreements when they decide to live together. Property disputes between unmarried couples can be long and very complex depending on the ownership of the property. At Wards we deal with all types of property disputes between unmarried couples.

We make every effort to try and resolve the situation through negotiation and mediation however if the matter does result in court proceedings, it can be a lengthy and costly affair. It is for this reason that we are suggesting to couples to consider these issues at the outset so as to avoid the potential dispute a few years down the line.

If you would like some further advice on this please contact **Lucia Mills**, our Cohabitation specialist on 0117 9292811.