

Family Law Consultants

GUIDE TO

moving in and getting married



FLC FAMILY LAW CONSULTANTS

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LIVING Together

Consider this - Unmarried couples in England & Wales have no legal rights if they separate – so without a cohabitation agreement you could be left with nothing.

Often the only legal recourse is an application under Land Law which can be complex and lead to a costly legal dispute in relation to your property should you split up.

There is no such thing in English Law as a Common-Law spouse. You cannot gain rights in respect of your partner's property simply by living in their house for a number of years.

There is very little protection in English law and the weaker party, who is often the main carer of the children can find themselves facing real difficulties in the event of a relationship breakdown. It is possible to make certain financial applications on behalf of a child but doing this may well mean a court application with its associated costs.

In England and Wales, when married couples divorce they both have a legal right to spousal maintenance and their fair share of assets. The court will take into all the circumstances and history of the relationship to enable a fair division. As a Cohabiting couple there are no such rights regardless of the number

of years they have been together and whether there are children.

For example, a woman moves into her partner's property (which remains in his sole name) they subsequently have 2 children. After 15 years the relationship breaks down. The woman has no right to remain at the property nor any claim on it even if she contributed towards the mortgage, unless the ex-partner agrees to her having a share. Furthermore she does not have a claim for maintenance for herself regardless of whether her partner has supported her during the relationship. Of course when she leaves the property if the children go with her she will be entitled to child maintenance which is a separate issue.

You can approach the courts in an attempt to demonstrate that you have acquired a share of the property by way of trust but the law is sketchy often leaving the courts to flit between legislation related to property and trusts which is technically complex and could therefore cost an enormous amount of money to fight it out in court.



“Unmarried couples in England & Wales have no legal rights if they separate – so without a cohabitation agreement you could be left with nothing.”

LIVING TOGETHER

The position is of course different if you have your home registered in joint names. There are 2 ways to hold a property in the UK which is not often explained at the time of purchase. You can hold as joint tenants which is the most common way and in the event of one of you dying the survivor automatically receives the whole property. The other way is tenants in common which will be in equal shares unless specified. In the event of death the deceased's share then passes in accordance with their Will or the intestacy rules if there is no Will.

Where the property is owned jointly English law will automatically divide it 50:50 – even if one partner contributed more to its purchase. The only way to change this is to alter those shares at the land registry usually at the time of purchase or by a written legal agreement saying in what proportions they own it.

At present there are no plans to make legal reforms to provide for cohabiting couples and therefore the best way forward is to make clear concise written arrangements of your own. Currently if you want the full protection of the law it would appear that the best thing to do is marry or draw up a cohabitation agreement, a bespoke agreement to suit your exact living arrangements and future intentions otherwise known as a “living together” agreement.

Q

***What is a
cohabitation agreement?***

A

It's a contract that sets out who owns what, in what proportions and lets you set out exactly how you will split your property, its contents, personal belongings, savings and other assets should the relationship break down. The agreement can also provide for what happens to your bank accounts, debts, and joint purchases. You can also include financial provision for any children that there may be.

The agreement can also set out how you and your partner will run the household finances, such as how much each contributes towards rent or mortgage and bills. Another consideration maybe provision of life insurance.

A practical agreement can save a lot of heartache as well as money in the future. An agreement about how you are going to live together can be created sensibly at the beginning of your relationship fairly and in the absence of the emotions that arise in the event of a breakdown.



Q

***How do I get a
cohabitation agreement?***

A

Ideally before coming in to see us you should have agreed a list of who owns what, how your things are to be divided in the event of a split and what you want from your agreement. We can help you think about these things if you are having difficulty. The agreement is basically a set of financial rules by which you will run your relationship and be bound by if the relationship breaks down. You will both need independent legal advice so one party would be our client and the other would need their own solicitor. One solicitor then prepares the agreement and the other advises the other party about the legal implications of the agreement and makes sure it reflects what you both intended and have agreed. Once everyone is happy we can then proceed to signing the agreement and having it witnessed.



Q

*Is it a legally
enforceable agreement?*

A

The Answer is yes, if it is prepared properly and both sides have received legal advice. By having independent legal advice it adds to the enforceability of the agreement as no one can then say that they didn't understand what they were signing or that they are pressured into signing it. We always add a schedule to our agreements to be completed by each solicitor advising to demonstrate this fact.

If faced with a properly drawn up cohabitation agreement the court will look to abide by it and enforce it appropriately. We do find however that after having a properly prepared and thought through document that these agreements are rarely challenged in the circumstances of a relationship breakdown. Couples tend to abide by the agreements they have entered into voluntarily and with a great deal of thought.



Q

*How much will
it cost?*

A

The amount of time required to prepare an agreement depends upon how complicated you want the agreement to be or the amount of assets involved. Our fixed fees start at **£1,416** for a simple agreement. This includes our initial appointment, drafting the agreement, dealing with the solicitor on the other side, making any subsequent amendments up to the final signing of the agreement.

You should also budget another £800 or so for the second partner to pay their own solicitor for independent advice on the agreement, as discussed earlier.

Whilst you may not want the cost of a cohabitation agreement in addition to the costs of moving in together, it is nothing compared with what it could cost to sort things out in court, if you go through a break up without an agreement.



Q

Can I use an agreement from the internet?

A We would advise against downloading ready-made cohabitation agreement templates from the internet because to stand any chance of being upheld by the courts, you must have both taken independent legal advice and the agreement must have been drawn up properly without errors.



Q

How else can we protect one another?

A Make a Will.

If you die without a Will your belongings will get divided in accordance with the laws of intestacy and our current law does not acknowledge cohabitants. So if you want to make sure your partner is protected make a Will setting out what you would like to happen, for example that they are allowed to remain living in your property. If you are not married or in a civil partnership, a Will is the only way to make sure your partner will inherit if you die.



Getting Hitched *Without a Hitch*

*In life there is insurance for virtually anything apart from marriage.
Why wouldn't you protect what matters most?*



Preparing For Your Wedding?

Have you thought about a prenuptial agreement?

A prenuptial agreement or a “pre-nup” as they are often referred to, is a contract that you and your future husband or wife enter into prior to the wedding ceremony. It is a formal agreement setting out how you intend to deal with your property, savings etc. Whilst married and how those items are to be divided in the event of the marriage coming to an end. The agreement can also set out ongoing future support such as child maintenance and spousal maintenance.

We would recommend that the agreement is drawn up well in advance to give time for you both to fully consider the implications of entering into such an agreement as well as the terms of the agreement itself. If we are the solicitors preparing the agreement for you, your future husband or wife would need to obtain independent legal advice, from a solicitor of their choosing, on the agreement before it is signed. The document must be completed, signed and witnessed a minimum of 28 days prior to the ceremony.

Are they legal in the UK?

We are finding that Prenuptial agreements are becoming increasingly popular. As you may know they have been legally binding in most US states for some time. However, until recently they were not legally enforceable in England and Wales. Following a landmark ruling by the Supreme Court's in the Radmacher V Granatino case in October 2010, prenuptial agreements are now strong evidence of what you intended and in most cases are likely to be upheld unless they are considered to be unfair by the court. This means that a prenuptial agreement now carries more weight and can provide legally binding guidelines for the couple to turn to in the event that things go wrong thereby avoiding the heartache and stress of a drawn out or difficult divorce.

GETTING MARRIED

Why should I have one?

It really is a choice for the two of you. There is no legal requirement to have a prenuptial agreement drawn up. You can only have one if you both agree that it is the right thing for the both of you.

Here are some of the reasons why our clients have chosen to have a prenuptial agreement:

- ***You and your future husband or wife have lots of assets/property that would be difficult to divide in the event of a dispute.***
- ***You or your future husband or wife may already own a property or maybe you hold one jointly as tenants-in-common. The prenuptial agreement could set out what is to happen to the property should the marriage breakdown.***
- ***You have been divorced before and do not want to go through a contested process again.***
- ***Perhaps you have an inheritance, a business, savings or children from a previous relationship that you'd like to protect. Likewise if you are expecting an inheritance that you would like to retain in the event of the marriage breaking down.***

- ***You would both like to control how things would be resolved rather than leaving your assets to be divided in accordance with the law at the time, should something go wrong.***

Is it worth having one?

It's a difficult question to answer and depends how you both feel. However in the unfortunate event of a divorce you may wish you had considered one, as it would make the process of splitting up far smoother.

How do I go about getting one?

Make an appointment to come in and tell us about your circumstances, provide details of your assets and what you would like to achieve. Please note that only one of you can instruct us, the other will need independent advice from another solicitor. We will ask you a series of questions to ascertain your individual financial positions, your desires and aims for the agreement. Each agreement is bespoke and drafted specifically for to your unique circumstances. You must bear in mind that it takes time to prepare the agreement and it must be signed at least 28 days before your wedding ceremony.

Once the agreement is signed in duplicate you will both have a copy to keep safe. It is recommended that your prenuptial agreement is reviewed regularly during your marriage and perhaps updated from time to time to make sure that it remains relevant and effective.

What else should I consider?

Once you have your pre-nuptial agreement you will need to make a will, either in contemplation of your marriage or as soon as practical after your ceremony. Your will would need to reflect and compliment your prenuptial agreement and make provision for each.

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