

# **MENNEER SHUTTLEWORTH**

## **Family Law**

### **Factsheet 4**

#### **LIVING TOGETHER (COHABITATION)**

Increasingly people are choosing to live together or cohabit rather than getting married or entering a civil partnership. This trend is likely to continue. The law currently treats people who are married very differently to those who cohabit. Unlike married couples and civil partners, when cohabiters separate, there is no financial protection. Both parties are treated in law as unrelated individuals irrespective of the length of time they may have lived together.

Bearing in mind these differences there are a number of matters which cohabiters need to consider:

##### 1. Wills / Intestacy

It is very important for everyone to make a Will but especially important for those cohabiting. If no Will is made then the Intestacy Rules apply to the division of the deceased's partner's estate. The Intestacy Rules make no provision for the surviving cohabitant. If cohabiting couples make Wills they will then have the opportunity to consider whether and how they would like to make provision for their surviving partner.

Cohabiting couples are not treated in the same way as married couples or civil partners in relation to Inheritance Tax. The exemption from tax for spouses does not apply to cohabiting couples and the value of any property in excess of the Nil Rate Band left to one party by the Will of the other will be taxed at the rate of 40%. The unused Nil Rate Band of one cohabitant cannot be transferred for use by the surviving cohabitant as happens with spouses.

If a cohabitant dies without making a Will it is possible for the surviving cohabitant to make a claim for financial provision out of the deceased's estate if they have lived with the deceased in the same household as husband and wife or as civil partners throughout a period of two years prior to death. This claim can be made irrespective of whether the surviving partner was financially dependent on the deceased.

##### 2. The Home

For most couples the home will be their largest asset. If cohabitants purchase a property together it is advisable to enter into a Declaration of Trust which will set out the contributions each party has made to the purchase price of the property and, therefore, the respective shares of each party in the

property. The Declaration of Trust will be binding upon separation of the parties and will provide how any equity in the property will be divided.

If there is no Declaration of Trust then there is a presumption that jointly owned property is owned equally and that a property in the name of one party belongs solely to that party. It is possible to argue against (rebut) these presumptions but the likely success of doing so will depend upon the circumstances of each case.

### 3. Possessions / assets

The owner of other assets and possessions except the home will usually be the person who paid for them. The non owning cohabitant will not usually have a claim in respect of them unless they can prove that the asset was given to them as a gift.

### 4. Maintenance

As the law currently stands a cohabitant cannot claim maintenance from the other cohabitant. This is why the home and how it is owned is particularly important for cohabitants.

### 5. Children

Cohabitants are able to apply to the Court for financial orders to be made in respect of their children. It may be possible, depending on the situation, for the Court to order one party to pay to the other for the benefit of a child a lump sum or periodical payments or to transfer a property to a party for the benefit of a child. Cohabitants can apply to the Child Maintenance and Enforcement Commissions ("CMEC") formerly the CSA for child maintenance in exactly the same way as married parents.

### 6. Recommendations for cohabitants

We recommend that before deciding to live together that both parties obtain independent legal advice on how best to ensure that they are protected in the event of death or separation. All cohabitants should consider making a will; think about how they want to own any property they are purchasing and think about whether or not they would like to make a legally binding agreement on how they are to hold their assets and divide them should they separate at some stage in the future.

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