

# Living together... if only it was that simple

Why couples living together do not get the same rights as a married couple.



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Given the increase in the number of cohabiting couples, compared with those of us who are marrying, you could be forgiven for thinking that the law gives the same or similar protection to both groups.

The Office for National Statistics (ONS) confirms that the proportion of cohabiting unmarried men in Great Britain aged between 16 and 59 increased from 11% in 1986 to 27% in 2007. For unmarried women the change was from 13% to 28% in the same period. However the ONS statistics also confirm that 4/5 of couples married in 1991 were still together a decade later, compared to 3/5 of cohabiting partners.

So if you are about to move in together do you know your rights, are you protected by the law, and if so to what extent?

There are many commonly held myths about living together.

■ *"I am fine so long as we live together for at least two years".*

**Reality:** No matter how long you live together unmarried, if you separate you do not have the same legal protection as a married couple in England and Wales. No law of the English Parliament or the Courts recognises the "common law" husband or wife.

■ *"The Government will bring in changes soon".*

**Reality:** Unlike marriage, which provides blanket protection for separating spouses, the law for unmarried couples is piecemeal and

unreliable; it was not created with cohabiting couples in mind. The Government is taking no action to remedy this. The Law Commission's most recent recommendations for change were shelved by the Government in March 2008.

■ *"It will never happen to me!"*

**Reality:** The statistics for cohabiting couples remaining together are surprising:-

One in three unmarried parents will split up before their child's third birthday, compared to one in 17 married parents, irrespective of income, education or ethnic group. The likelihood of you separating is even higher where you have no children. These statistics suggest you are more likely than not to need legal advice if you have children or own property and separate.

■ *"Well if we do separate I expect it will be quite straightforward."*

**Reality:** The current law that does apply to separating unmarried couples in England and Wales is a maze of contract, trust and property law, which would-be litigants enter at their peril. Whilst the tills ring for lawyers, expensive litigation guarantees a sizeable dent in the family assets.

■ *"...Surely I will get back what I put in financially?"*

**Reality:** This depends on whether any property you have bought as a couple is in joint names. If it is, then recent case law all the way to the Supreme Court supports a 50/50 split of any jointly held property, i.e. bricks and mortar that

you own together. However even if you have put more into any jointly held property this does not guarantee that you will get more than 50% back, such is the approach taken by recent Court decisions. You will be even worse off if the property has been purchased in the sole name of your partner. In only exceptional cases will you be able to recover any contribution you have made. The starting point is that the owner is entitled to 100% of the property whatever you have paid.

So, if you want to live together without marrying what can you do for your legal protection if you split?

Enter a cohabitation contract. This can cover all aspects of your finances, your future together and your children, if you have any. It is the most comprehensive step you can take to invoke the protection of the law. You can tailor the contract to suit you, including making future changes. It can cover any eventualities should you separate.

You will need to take legal advice to draft the agreement. But provided it is properly executed your cohabitation contract will be legally enforceable and a tiny fraction of the cost of an expensive law suit if you break up.

Execute a trust deed when buying any property. This will confirm contributions to the purchase price, purpose of the property, when the property should be sold and division of the proceeds if you part. This is not as comprehensive as a cohabitation contract as it only relates to property in question not your relationship as a whole.

**Don't jump into cohabiting without a parachute. Take action now.**



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