



CO-HABITEES' RIGHTS

What is “a cohabitee”?

A person who lives with another person as if they were husband and wife, or two persons of the same sex who live together as if they were civil partners. Those simply sharing a flat, for example flat mates, are not cohabitees.

Written Cohabitation Agreement – why bother?

Whether you already live with your partner or are considering moving in together, you may wish to discuss the financial implications with a member of our family law team. To avoid financial uncertainty in the future, you should consider a written Cohabitation Agreement to provide for division of your assets should your relationship come to an end. It is also a good idea to make a will.

What are a cohabitee’s rights on separation?

Provided an application is made to court within one year of the date on which the cohabitation ended, a court may order a capital sum, which can be paid in instalments, to be paid by one cohabitee to the other. There is no provision for the transfer of any property. The legislation in this area is complicated. The court must consider whether any economic advantage or disadvantage has been gained or suffered by either party and then balance up any advantage or disadvantage in determining whether a capital sum is due to the applicant.

Cohabitees have no legal obligation to pay maintenance to each other if they separate, although there is an obligation to maintain any child(ren) of the relationship. The court can make an order to pay a specified amount in respect of the future economic burden of caring for any children of the relationship.

What are a cohabitee’s rights if the other cohabitee dies?

The surviving cohabitee can make a claim on the deceased’s estate provided the deceased does not have a Will and they were living together immediately before the death. The claim must be made to the court within 6 months of the death.

The cohabitee’s claim will be considered after any claim of the deceased cohabitee’s surviving spouse or civil partner. The court will also have regard to any claims made on the estate by the deceased’s children and to any benefit the surviving cohabitee has received or will receive, for example from joint life policies. The maximum amount that can be claimed will not be more than the amount which would have been available to a surviving spouse or civil partner. The court can order payment of a capital sum or the transfer of property from the deceased’s net estate. Under landlord and tenant law there may be rights for a cohabitee to apply to transfer a tenancy of the family home, or to defend eviction proceedings.