Common Law Marriage –

The rights of unmarried couples &

the myth of common law marriage

A guidance note

The Transparency Project

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www.transparencyproject.org.uk

info@transparencyproject.org.uk

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SECTION A. THE MYTH OF 'COMMON LAW MARRIAGE'

What is 'common law marriage'?

Today, people use the term 'common law marriage' to describe a particular belief.

It is the belief that, after a certain number of years, a couple living together in a relationship (cohabitants) get the same legal rights as if they were married (or civil partners).

Some people believe this is true after seven, ten, or even 14 years. Some people believe this is true as soon as you move in together. In a recent survey of 1,000 cohabiting couples, 35% believed that they had the same rights as married people, or were unsure about it.

But it's just not true.

In England & Wales (the countries covered by this guide) there is no such thing as 'common law marriage' or a 'common law' husband or wife.

No matter how long you live with your partner, you will never get the same legal rights as a couple who are married or in a civil partnership. The law about couples who are not married nor in civil partnerships will not be affected if and when civil partnership is extended from being just available to same-sex couples to include opposite sex couples.

According to the Office of National Statistics, the number of cohabiting couples has almost doubled in the last 20 years. In 2016 there were 3.2 million opposite-sex cohabiting couples, almost double of the number from 20 years ago, and they have 2.1 million children between them.

That's a lot of people, and we know that 35% of them don't understand what rights they have – or, rather, what rights they *don't* have.

What is a cohabitant?

Married couples and civil partners will typically (but not always) live in the same home, and are therefore cohabiting. However, to make things clearer - In this guidance note we use the words 'cohabitants' or 'cohabitees' to describe couples who live together in a relationship but who are not married and who are not civil partners.

But what if we have children together?

The position doesn't change if you have children with your partner. Even then, there is no such thing as 'common law marriage' in England & Wales.

The only way to have the same legal rights as a married person, is to get married. If you are in a same-sex relationship you also have the option of a civil partnership, which gives virtually the same rights and responsibilities as marriage.

The purpose of this guidance note is to explain the legal difference between couples who are married (or in a civil partnership) and couples who are living together (cohabiting).

It will set out what legal rights cohabitants do have, and how they differ from the rights of people who are married or in a civil partnership.

Where did 'common law marriage' come from?

In past centuries, some people married according to local customs, even though this was not really allowed. These could be called 'common law' marriages. In 1753, an Act of Parliament clamped down on these marriages. Sometimes, people who married abroad were also referred to as having common law marriages.

However, the phrase 'common law marriage' as people mean it today did not start to be used until the 1960s. The idea that 'common law marriage' means cohabitants having the same rights as married people is therefore a relatively recent idea, and it isn't clear how it arose.

But if there is no such thing as a 'common law marriage' or 'common law partner' then why is it a category that I can select on website forms or when applying for some bank accounts?

Sometimes, on application forms when you are asked to describe your marital status, there will be an option you can pick which is 'common law/living with partner'.

Just because this wording is used on an option by some companies, doesn't mean that it has any legal status in England or Wales.

It may be because the company, for example an insurance comparison website, is originally based in another country where the term 'common law marriage' is recognised in the law of that other country.

Why does it matter if I thought that I was in a 'common law marriage' and it turns out that I am not?

It is important that you can know and understand your true legal position to be able to make informed decisions about how you want to live your life and how you want to organise your relationships.

For example, you might have thought that it was ok to live with your partner when you thought you got the same legal rights as a married person, but after you have read this note and learned about the different approach the law takes, you might look at your position in a different way and want to take some action to protect yourself.

For example:

- You may decide to make a will to ensure that if you die, your estate goes to your partner. Currently, unmarried partners do not inherit unless there is a will or they own a house with you in a certain kind of way called 'beneficial joint tenancy' (which is a way to own a house not about renting).
- You may consider formalising your relationship as a marriage or civil partnership to ensure that you get the enhanced legal rights it would confer.
- You may decide to have a cohabitation agreement with your partner, setting out what will happen if the relationship breaks down.
- You might change the way you own property such as a house to give your partner a more secure interest in it.
- If you have children, you may want to check that you have 'parental responsibility' for them as not all unmarried fathers have that.

These issues are explained below.

SECTION B. COHABITANTS AND THE CURRENT LAW

Finances on separation

When a married (or civil partnered) couple separates, each party can bring a 'financial remedy' claim against the other. This type of claim is made under a law called the Matrimonial Causes Act 1973. It is a claim to ask the court to decide how to separate the couple's finances.

A financial remedy can include:

- What should happen to the family home they have lived in. For example, who should get to keep the house and carry on living in it, whether the family home should be sold and if so how much money each partner should get from the sale.
- Whether one partner should be given a share in the pension belonging to the other partner.
- Who is to have any savings or investments.
- Whether one partner should pay a regular sum of money for the other party to support themselves. This is called spousal maintenance or spousal periodical payments. This is normally a set sum paid by one person to the other on the same day every month. This can either be for a fixed period of time, or for the whole of their lives. This is specifically for the partner and can be paid in addition to any money paid as child maintenance.

Even if they agree what is to happen, if a couple wasn't their agreement to be binding the Family Court still has to approve the arrangements. If they can't agree, the court will decide for them. The aim is to ensure that the money and assets that a couple have are distributed fairly to meet the needs of both partners and any children even if the assets are not jointly owned. It doesn't matter if the family home is registered in the name of the husband, for example, as the court can make an order giving the home to the wife.

Because the couple has been married, this law means that the claim will be heard before the Family Court. The Family Court has wide powers to do what is fair.

But it's different for couples who are not married or in civil partnerships

When a cohabiting couple separates, the Family Court does not have the power to make any of these decisions. The Family Court has no power to:

- Change the legal ownership of a home from one cohabiting partner to the other;
- To order one cohabiting partner to pay spousal maintenance to the other;
- To divide the pension belonging to one of the partner's so that the other gets a share in it.

It cannot make the parties act fairly towards one another.

So if the Family Courts can't help with my money on separation because I am not married, do I get any legal help or protection from the courts at all?

There is no power for any court to give you a share of your partner's pension, or any maintenance for yourself.

However the Civil Courts (County Court) can make decisions about whether you have an interest (a stake or share) in a family home or any joint bank accounts that you have with your partner. This is explained in the next section.

It is also possible to make a claim for financial support for any children you have together.

Property rights & interests in a house or another property

Where a cohabiting couple have a disagreement about who has a share in a house or property, the Civil Courts can make a decision about this.

This doesn't have to be a disagreement only about a family home that you have lived in together. It might be a disagreement about another property which one of you bought as an investment and perhaps worked on together.

To make this decision, the Civil Courts do not use family law. The law that they do use is explained below.

In the next few sections different scenarios we explain some common situations that partners may face about property.

My partner and I own the home that we lived in together as a family. The house is registered in both of our names. Now that we have separated, what share do we each have in the house?

If a house you have lived in is registered in both of your names, then the courts will start by assuming that you each have a 50% interest in the house.

For example, if you and your partner lived in a house worth £200,000 after any mortgage is taken off, and the house is registered in both of your names, then the starting point for the court would be that you each have a 50% interest in the house. In terms of money, this means you would both have a share worth £100,000.

This is the starting point for the court, but the 50% share each can be changed, either by taking certain legal steps, or by the actions and behaviour of you and your partner during the relationship. However, this is a very difficult legal issue and it is much safer to have a written document saying who has what interest in the house.

Legal Steps

You can change the interest that you each have in a house by either:

- Completing an Express Declaration of Trust. This can be done either as part of the TR1 Form which you use to register the house in your joint names in the first place, or it can be done

separately. This is a statement where you and your partner can set out the interest or share you would each have in the property if you want this to be different from 50% each. If this is something that you are considering, you should get advice either from your Local CAB (Citizens' Advice Bureau) or by going to see a solicitor.

Or by

- Completing a form called a 'Form JO'. This is also a chance for you and your partner to set out the share that you would each have in the house if you do not want it to be 50% each. If this is something that you are considering, you should get advice either from your local Citizens Advice Bureau (CAB) or by going to see a solicitor.

If you and your partner agree to complete either of these forms to change the interest you would each have in the house, this is an agreement which you must both agree to freely. If either you or your partner has been put under pressure to agree to the change from 50% interest, or has agreed to do so based in information which is false or inaccurate, then this could mean that the legal document that you have completed could be ignored by the courts.

Also note that just because the mortgage is in only one person's name doesn't mean that the house cannot be registered in both of your names.

Other actions or behaviour by you or your partner

The court can also decide that you and your partner each have a share in the house which is different from 50% each.

They can do this if they think your behaviour or conversations with your partner show a plan between you to have a different share each in the house which is not 50% each. This is called a 'common intention'.

What would this 'common intention' look like in real life?

The easiest way to understand is to look at some examples:

- Amy and Bilal decided to buy a house to live in together. They registered the house when they bought it so that it was in both of their names. At the time, they had a conversation about what share they thought it would be fair for them to each have in the house. As Amy was earning more money, she had paid more towards the deposit than Bilal. It was also agreed between them that she would pay more towards the mortgage and bills for the house each month. In their discussion, they agreed that Amy should have a bigger share in the house than Bilal, and that she should have a 75% share and Bilal should have a 25% share.

  In this example Amy and Bilal had a conversation where they dealt with this question of what share they both had in the house and they agreed on shares that were different to 50% each. The court can then use this chat to decide that Amy and Bilal had a different 'common intention' to the usual 50% share each. However, it would have been much easier if they had recorded that agreement in writing so there was no dispute later.

- Chris and Dave lived in a house which was registered in both their names. At the time they bought the house they had not had any conversation about what their shares in the house would each be, as they were too busy enjoying their new home and their relationship. A few years' later, there was a leak in the roof that was very expensive to fix. As Dave had inherited some money, he offered to pay for the roof to be fixed. Chris felt bad that Dave was spending so much money himself on their home. He suggested that Dave have a bigger share in the house to recognise the money he had paid for fixing the roof. They agreed that Dave would have a 55% share and Chris as 45% share.

  Again, in this example Chris and Dave had a direct conversation about what shares in the house they should each have. However, they did not have this conversation until a long time after they had bought the house. The court could use this to decide that Chris and Dave's 'common intention' as to what their shares should be in the house changed at this point so they would no longer be 50% each.

- Emma and Frankie lived in a house which was registered in both their names. They never had any discussions about the shares they should each have in their house. Emma was very good at DIY and decorating. Over the years they lived in the house, Emma inserted new plumbing and spent her own money and time on converting the basement of their house into an additional bedroom and a new bathroom. Frankie had encouraged Emma to do this work on the house, and had always said that the work Emma had put in would be recognised one day. In order to do this, Emma turned down other paid work for the times when she was working on the house. She spent her own money on the tools and materials for the work she did.

  In this case, the court would look at the whole course of the behaviour between Emma and Frankie. They could decide that there had been an unspoken common intention that Emma would one day be rewarded financially for all the work she had done to improve the house. If the court decides that Emma has relied on Frankie's comments and suffered loss as a result (by spending money and turning down paid work), then they could decide that Emma now has a share which is more than 50% in the home.

A situation like Emma and Frankie's is the most common between cohabiting partners as it is unusual for partners to have direct conversations about their shares in a house. If you find yourself in a situation like Emma, you should seek the advice of a solicitor and/or your local CAB.

Sole owners

My partner owns the house that we have lived in. Are things different where only one of us owns the house?

If one partner is registered as the sole owner of the house, then the starting point for the court is that they have 100% of the interest in the property. This means that the court will assume that the partner who is not named as an owner has no interest in the house. That person will have to persuade a court that actually they do have a share in the house after all. This can be very difficult and expensive to do.

There are two main ways that the partner who is not named as an owner can try to do this:

1. By showing evidence that there was a direct agreement or arrangement which was discussed between the partners as to the share in the house that each of them would have. This has to be about ownership of the house not just that they would live there together. It does not necessarily have to be an agreement that has been written down, it could be a partner telling the court about a conversation that they had had with their partner about that. The partner also has to show the court that they have relied on this agreement or arrangement, and that they have suffered because they have lived and acted on reliance on that agreement.

2. If there was no direct agreement or arrangement, then the partner will have to show the court that their behaviour and that of their partner shows that they did intend to share ownership in the property. This behaviour must be financial, such as paying part of the deposit when buying the house or paying some of the mortgage payments. It's probably not enough to have paid other bills unless they enabled the legal owner to pay the mortgage. The law here is a bit uncertain. The non-owner must also show they have relied on having a share in the house and acted in a way to damage themselves as a result. Paying the mortgage or towards the deposit will probably do this.

If I manage to show that I have an interest in one of the two ways above, then does that mean the court will give me a 50% share in the house?

Not necessarily, no.

Once a partner has managed to show the court that there was an intention to share the house in either way (1) or way (2) above, then the court has another issue to decide. This is to decide *how much* of a percentage share the partner who is not a named owner of the house should get.

When the court is deciding what percentage share each partner should have, it will look at any discussions you and your partner had about that. If you didn't have discussions then the court will look at all how you and your partner have acted about the house to try to work out what would be fair.

The court will therefore not just look at money that you have paid towards buying the house, paying the mortgage, or renovating or decorating the house. The court also looks at other things, such as giving up work to do the decorating and plumbing, as Emma did in our example earlier.

Once the court has looked at all of this, they will decide what percentage interest each of you should have in the house. This often means that the house will have to be sold so that each partner can have their money, but sometimes one partner can afford to buy out the other's share so that they can keep the house themselves.

My partner and I are separating and he has told me to leave the family home. We lived in it together but it is registered in only his name. He says it is his house and won't give me any money or help. What should I do or agree to in this situation?

It is very important if you are in this sort of situation, or you are worried that you might be, that you go and get some legal advice as soon as possible. A solicitor will be able to advise you about whether you have any right to stay in the home.

What if my partner and I were engaged to be married – does that make any difference to what happens to the house?

Yes. You should mention this when you seek advice as there is specific legislation which extends laws originally intended to protect the property of married couples to those who are or have recently been engaged. The court has specific powers to make orders about property when either party has contributed money or helped improve its value in some other way, which are different to the powers it has if the parties have not been engaged. However, these special powers only apply up to three years after the end of the engagement, and are rarely used.

Bank accounts

If you have a joint bank account with your partner, it is assumed that you are each entitled to 50% of the money in that account even if you paid in different amounts. You would need to prove in court that that was not your common intention, just like with a family home. It's the same if you wanted to show that the money in your partner's account actually belonged to you.

If you get a joint bank account with a partner who has a worse credit score than you (for example if they have lots of loans, credit agreements, or overdrafts which have not been agreed with the bank), then having a joint bank account with them could damage your credit rating too.

Inheritance

If a person dies and they have not left a valid will, this is called 'dying intestate'.

If a person dies without leaving a valid will, then the property they have left (this is called their estate), will be divided between relatives according to special rules. These are called the rules of intestacy.

These rules allow for a married spouse or civil partner of the person who has died to inherit. There are also rules for when any children of a person who has died will inherit or not.

Under these rules, a cohabiting unmarried partner cannot inherit.

If your cohabitee dies without making a valid will, there is no rule that allows you to inherit any of your partner's estate. This means you will not be able to inherit automatically.

Does that mean that I can never get anything if my partner dies without making a valid will?

Not necessarily.

In some circumstances you can apply to the court, and ask them to make reasonable financial provision for you from the estate of your partner. You will only be able to ask the court for this help if you have lived with your partner for at least two years. Those two years must be the two years

before he died. If you find yourself in the position where your partner has died without leaving a valid will, you should contact your local CAB or a solicitor.

If you own a property together in both of your names, and you hold it in a certain way called a 'beneficial joint tenancy' (which is a type of ownership not a type of renting) then your deceased partner's share will come to you under the 'survivorship rule'. A solicitor will be able to tell you whether you have a 'joint tenancy'. Not everyone who owns a house with someone else has a beneficial joint tenancy. If you don't, then your partner's share of the house will be divided among their relatives under the rules of intestacy, and will not go to you as the unmarried partner.

In order to be sure that you and your partner will leave your estate to each other when you die, you should make wills which name your partner as the person you want to inherit your estate.

Ok, so how do I make a will?

Information on how to make a will can be found at https://www.gov.uk/make-will.

Parenting

Ok, so there are differences between being married and living together when it comes to money and property. Are there any differences between married and cohabiting couples who have children?

Yes, there are some differences between the legal position of married parents and unmarried parents.

The differences are about:

a. Who has Parental Responsibility for your child; and
b. Who can name the child and register their birth.

Parental Responsibility

What is Parental Responsibility?

A person who has Parental Responsibility for a child has the right to make important decisions about their care or upbringing.

This means it is a responsibility for making decisions which are in your child's best interests.

Parental Responsibility is required to enable a person to consent to medical treatment on behalf of a child or to make other decisions regarding education and health issues. For more information on what Parental Responsibility means in day to day life, please see http://childprotectionresource.online/tag/parental-responsibility/.

Who has Parental Responsibility for a child?

All mothers automatically have parental responsibility for children they have given birth to or adopted.

All fathers who are married to the mother at the time of the child's birth will also have automatic parental responsibility for that child.

All female partners who are civil partners or married to the mother at the time of the child's birth will have automatic parental responsibility for the child in the same way as married fathers.

Ok, but what if I am not married to the other parent of my baby?

Unmarried fathers or unmarried female partners of a mother will not have parental responsibility for the child, regardless of their genetic relationship with that child.

Unmarried fathers can get parental responsibility after the baby is born. This can be done in four different ways:

- Their name being recorded on the child's birth certificate when the child is born after 1 December 2003;
- Reaching an agreement called a Parental Responsibility Agreement with the mother who gave birth to the child. There is a special form for this, and you need to hand it in at a court office (although you don't need a court hearing and you don't have to pay to do this);
- By an order being made by the court which grants the unmarried dad parental responsibility for the child.
- By marrying the mother even if the child is already born. This does not work for step-fathers, only biological fathers. PR is not lost if the parents later divorce.

A female partner of a mother who gave birth to a child can gain parental responsibility in the same ways as unmarried fathers above (if the circumstances of the child's conception meet certain criteria).

Registering the birth of children

A child's birth must be registered within 42 days of their birth.

If the parents of a child are married at the time of the birth, then either parent can register the birth on their own. Although one parent may be doing this on their own, the names and details of both parents will be recorded on the child's birth certificate. This is because where a married woman gives birth to a child, the law presumes that her husband is the father of that child.

If parents are unmarried, then it is the mother's responsibility to register the birth of the child. A father can only do this if he attends with the mother or has a statutory declaration from her or a court order, as set out below. This is because when an unmarried woman gives birth to a child, there is no matching presumption that her current partner (or her partner at the time the baby was conceived) is the father of that child, even if she is living with the partner at the time.

Where the parents of a child are unmarried, the father's details may only be recorded on the birth certificate in one of the following circumstances:

- both parents attend and complete the birth registration together;
- one parent attends to register the birth, but brings with them a 'statutory declaration of parentage' form which has been completed by each parent;
- one parent attends to register the birth, and produces a court order which awards the unmarried father parental responsibility for the child orwhich recognises him as the father;
- one parent attends to register the birth, and produces a Parental Responsibility Agreement signed by both of them.

If a birth is registered without the father's details, this does not prevent a re-registration at a later stage which includes the father's details.

If the mother is in an unmarried/non-civil partnered same-sex relationship, then there are special rules about when her female partner can be named on the birth certificate.

Who can decide what the baby's name will be?

Whoever registers the birth can decide on the child's name. It is possible to amend a name by court order or in the first year of a child's life.

Child maintenance

If the parents weren't married when we had a baby, does the other parent have to pay for the child's maintenance?

There are two ways this can happen.

Under the Child Support Act 1991 the parent with the care of the child or children can apply for maintenance from the other parent. There are a number of conditions that must be met. You can find out all about these and how to agree an amount, or what to do if you can't agree, at the Child Maintenance Options website: https://www.cmoptions.org/.

Under the Children Act 1989, Schedule 1, a parent or guardian of a child or the person the child is living with can apply to the court for an order that the other parent who is not the main carer for the child should pay periodical payments (maintenance) or even a lump sum for the benefit of the child. Such an order can even be made for the benefit of a child over 18 if they are in full time education, or are disabled or in certain other limited circumstances.

However, the court can only make orders for maintenance under the Children Act if the Child Support Act scheme doesn't apply. The court is able to make school fees orders or capital (lump sum orders) even if maintenance has to be dealt with under the Child Support Act scheme.

The same law also allows the court to order one parent to provide a house for the parent with care of their child or children to live in until the child has grown up / reached a particular age or stage of education. In this situation the house would be in the name of the parent providing it, and the caring parent would have to give the house back once the child was grown up. In some cases, the court will transfer the house to the parent with care without them having to give it back. The court can also transfer a secured tenancy to the parent with care. How the court deals with this sort of application will depend very much on what resources are available to meet the childrens' needs.

What about social security benefits - does splitting up make a difference?

Yes. It is always worth bearing in mind that certain social security benefits may be available, depending on your means and situation. Some things, like child tax credit, can be claimed by either parent, so make sure you know what is happening with that. You can get advice from your local CAB or benefits office about this. See also https://www.gov.uk/browse/benefits/entitlement

Domestic Abuse

If you are a victim of domestic abuse, the courts can help protect you whether you are married or not.

Domestic abuse doesn't just mean hitting or pushing someone. It can include verbal threats, forcing someone to give up their money, emotional abuse or controlling behaviour. The government and courts define abuse as :

> 'any incident of threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between individuals who are associated with each other.'

Domestic abuse can be several different types of crime, such as assault, controlling or coercive behaviour, forced marriage, rape, or harassment. As these are criminal issues you can report these to the police.

There are also orders that the Family Court can make to protect you (called non-molestation orders and occupation orders). Victims of domestic abuse may be eligible for legal aid to help them (sometimes even where they might not qualify for legal aid for anything else).
The Transparency Project has produced a guidance note about domestic abuse and family courts. It can be downloaded on The Transparency Project's website.

Non-molestation orders

A non-molestation order is an order that bans your former partner from harassing you, or encouraging someone else to do that. A person who breaks that order commits a criminal offence and can go to prison.

Non-molestation orders can be made against a wide category of people: a spouse/civil partner or former spouse/civil partner; a person you are/were engaged to; someone you're involved in other family proceedings against; the parent of your child or someone else who has Parental Responsibility for your child; a cohabitant or former cohabitant; someone you have lived with unless they are your lodger or tenant; someone you have had an long(ish) intimate relationship with; or certain relatives including your parents.

Occupation orders

An occupation order is an order that tells another person to leave the family home and not to come back to it, and sometimes not even to come near it. This can apply even if the abuser owns the house. The court can also make an order that allows the victim to stay in the house even if they don't own it. The court can put a 'power of arrest' on the order so that if the abuser breaches the order they can be arrested.

You can apply for an occupation order if you are an owner of the house or have an interest in the house (see above) or you were or are married/civilly partnered to an owner. You can also apply if you cohabited with your partner in the house.

SECTION C. COHABITATION CONTRACTS

If the law doesn't give me the same protection when I am cohabiting, is there anything I can do to protect my position?

You and your partner can sign a cohabitation contract, sometimes known as a cohabitation agreement. You can do this at any time, either when you first decide to move in together, while you are living together, or when you decide to separate.

A cohabitation contract is like any other contract that you might enter, for example when you start a new job. This means a cohabitation contract, like a job contract, would be handled by Civil Courts who deal with contract law, rather than the Family Courts.

If you and your partner are considering agreeing to a cohabitation contract, it is best to get some legal advice, either from your local CAB or from a solicitor. If your partner asks you to sign a cohabitation contract, you should make sure you get some independent legal advice before you do. (That means going to a different solicitor than your partner, so there is no conflict of interest.)

While you are thinking about it, you should also consider making wills. (See section 4 above.)

A cohabitation contract can offer some protection, but it cannot give you all the same legal rights and protections that you would have if you were married or civil partners.

What should be in a cohabitation contract?

There is a lot more to think about when deciding what should go in a cohabitation contract than you might think. Below is a list of questions and issues that you might want to answer when deciding what you think you want to go in your cohabitation contract:

Houses

- Do you and/or your partner own a house?
- Do you and/or your partner plan to buy a house?
- If so, how much money are you and your partner each going to put in to the deposit for the house? Are you each going to pay the same amount or different amounts?

- If you have a mortgage and other bills, how much are you and your partner each going to pay towards the mortgage and bills? The same amount or different amounts?
- Will your answers to the question above about bills always stay the same? What would happen if one of you has children or stops working or loses their job?
- When you have thought about the above questions, do you and your partner both want to have an equal 50% share in the house? Or do you think that one of you should have a higher share than the other?
- What should happen to the house if you separate? Does one partner get to keep it or would you decide to sell it? Would you still decide to sell it if you had children?

Bank accounts & credit cards

- How much are you and your partner going to pay into any joint account that you might have? Are you going to pay in monthly, or weekly or at other times? Are you each going to pay in the same amounts, or different amounts?
- If you buy things for the house like furniture from the joint account, if you separate who owns those items? Do you own them jointly together or do they belong to only one partner?
- If you split up and there is money left in the joint bank account, how are you going to divide this money between you?
- If you have a joint credit card and you split up, are you going to share the debt left on the card equally between you? Or is one person going to pay off more than the other?

Cars

- If you are going to buy a car, whose money are you going to use to buy the car?
- If you decide to get a car on a finance agreement, who is going to pay the monthly payments on the finance deal? Or will you share these payments between you?
- Whose name should the car be registered in?
- If you split up, who is going to own and keep the car?
- Whose name is the car insurance going to be in? Who is going to pay the car insurance or are you going to share this between you?

This is not a list of everything that you might want to include in a cohabitation contract, but it is an example of some of the issues you may want to think about with your partner and include.

How do we make sure that a cohabitation contract would be binding?

If you want to make sure that you both are bound by, or stuck with, what a cohabitation contract says, then you should make sure that:

- You and your partner should both get separate legal advice about the agreement and whether what you have decided to put in the agreement is fair. If either you or your partner does not get their own legal advice on the cohabitation contract, then a court may decide that you didn't plan to make a document that is legally binding.

- You and your partner should both be entering in to the cohabitation contract by your own free will. This means that neither of you is agreeing to the contract because the other person, or anyone else, is putting pressure on you to do so. It also means you are not agreeing to do so because of any fraud which your partner has used to encourage you to agree. This is because then you would be entering the contract because of something which isn't actually true.

- The contract should be written in a special format called a Deed. This is because you need a Deed if you are making any decision about what interests that either you or your partner have in any land or property. Making a document a Deed just means having a particular type of wording at the start and ending of it, and having your signatures witnessed, so it doesn't cost any more than a normal contract.

- The contract should also be written in language that is clear and precise so that there is no misunderstanding what it is talking about. This is why if you want a cohabitation contract, it is best to get a solicitor to write the contract for you. If you do decide to write the cohabitation contract yourself, there are examples that you can fill in online. If you want to do this, a group of Family Solicitors ('Resolution') have written some contracts in outline which you can buy and fill in (see www.resolution.org.uk)

SECTION D. ARE THERE ANY REASONS WHY I MIGHT NOT WANT TO GET MARRIED OR FORM A CIVIL PARTNERSHIP?

Getting married or forming a civil partnership creates both rights and obligations between the couple. A couple who have formed a legal relationship in this way have a duty to maintain one another. That legal duty continues until the divorce is finalised – and where the court orders maintenance to be paid it can continue even after divorce. The family court is given the power to make financial orders on separation, in effect deciding what that duty to maintain should look like in practice. It can mean that money or property that one partner has brought into the marriage leaves the marriage in the hands of the other partner, or that money earnt by one partner is paid to the other.

Marriage or civil partnership may be less attractive to the party in the stronger financial position, because if the relationship goes wrong they run the risk that they will have to share their property or money. Generally speaking this risk is lower if the couple do not marry or enter a civil partnership, but as we have seen above untangling the issues around home ownership for cohabiting couples can be complex and costly for both parties.

Where a couple wish to marry or form a civil partnership but are worried about the financial consequences of marriage / civil partnership at the end of a relationship, they may want to consider a pre-nuptial agreement. Pre-nuptial agreements are a contract setting out what the financial arrangements will be if the marriage breaks down. They are not automatically binding, but if they have been properly set up with independent legal advice (along the lines described above for a cohabiting arrangement) are likely to be upheld by the family court unless the needs of any children mean the court has to make a different order.

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