

What can individuals who are co-habiting do to help protect their rights?

1. Make sure that any property owned is in joint names and that each person sharing the property is clearly identifiable.

If a couple hold a property as "tenants in common", they can decide the exact share that each one has in the property. Many couples with children prefer to be "joint tenants" so that if one of them dies, the other automatically becomes the sole owner of the whole property. How you are to own property is something to discuss with your solicitor early in the property transaction.

2. Enter into a co-habitation agreement.

This is a legal contract which governs how assets such as the house are to be divided upon separation.

3. Ensure that the father has a parental responsibility.

This can be done by entering into a Parental Responsibility Agreement with the child's mother (which needs to be registered at Court), by the Court ordering that the father has parental responsibility or by the parents marrying.

4. Make Wills or update Wills

This will deal with the division of property and, if there are children, to appoint the father as guardian.

It is also worth noting some of the tax implications. For income tax purposes, an unmarried couple will not have the benefit of a married person's allowance. The transfer of assets over a certain amount between unmarried partners (especially on death) may be subject to Inheritance Tax at 40%. Similarly, a disposal of assets made between an unmarried couple may be subject to Capital Gains Tax (CGT), whereas it would not be chargeable to CGT if the couple were married.

If any of the issues raised in this leaflet apply to you or your partner, we would gladly discuss them with you in more depth. The importance of co-habitees making Wills cannot

be stressed too strongly and we would be happy to help you do this.

Please speak to one of our receptionists who will make an appointment for you with the appropriate member of this firm.

Helping people, solving problems across the East Midlands since 1893

Through a skilled staff of 70 people in offices at Ripley and Belper in Derbyshire, and Beeston and Long Eaton in Nottinghamshire - Ellis-Fermor & Negus provides a full range of legal services including:

- Divorce, Separation & Children Issues
- Wills, Probate & Estate Administration
- Tax Planning & Elderly Client Matters
- Buying, Selling or Renting Property
- Commercial Property Work
- Accident & Personal Injury Claims
- Business, Commercial & Charity Matters
- Employment Law Advice
- Care Home Charges Advice



RIPLEY:

5 Market Place, Ripley, Derbyshire DE5 3BS

Tel: (01773) 744744 Fax: (01773) 570047 Email: ripley@ellis-fermor.co.uk

LONG EATON:

35 Derby Road, Long Eaton, Nottingham NG10 1LU

Tel: (0115) 972 5222 Fax: (0115) 946 1152 Email: longeaton@ellis-fermor.co.uk

BEESTON:

2 Devonshire Avenue, Beeston, Nottingham NG9 1BS

Tel: (0115) 922 1591 Fax: (0115) 925 9341 Email: beeston@ellis-fermor.co.uk

BELPER:

7 Bridge Street, Belper, Derbyshire DE56 1AY

Tel: (01773) 821665 Fax: (01773) 826634 Email: belper@ellis-fermor.co.uk

www.ellis-fermor.co.uk

Myths and the hard truth

ELLIS-FERMOR & NEGUS
SOLICITORS

Exploding the myth of the common law spouse and what every co-habitee should know

Myths and the hard truth ...

Although increasing numbers of people choose to live together without getting married, it is questionable whether many are aware of their rights if the relationship founders and they go their separate ways. Some of the assumptions that people make are simply myths. (A co-habitee is someone who lives with another person to whom he or she is not married).

Myth 1

"If a man and a woman live together for 2 years, the law considers them to be common law husband and wife."

There is no such thing as a common law spouse. However long two people live together, as the law stands at present, they do not have the same legal rights as a married couple.

Myth 2

"If one person dies intestate, the other partner will automatically inherit everything"

Normally, only a Will can confer an interest in the estate of the deceased unmarried partner. However, in certain circumstances, it is possible for the surviving partner to make a claim against the deceased partner's estate but to do so they would have to apply to Court and there is no guarantee of success. To protect an unmarried partner, a Will is essential.

Myth 3

"An unmarried father automatically has the same rights as a married father as long as his name is on the child's birth certificate."

All mothers and married fathers automatically have parental responsibility. This means that the law recognises that they have all the rights and responsibilities of a parent. An unmarried father automatically acquires parental responsibility, if his name is on the child's birth certificate after December 1st 2003. Legally, the unmarried father is unable to participate in important decisions in the child's life unless he has parental responsibility, in addition, if the child's mother dies intestate, the father will not automatically become the child's guardian unless he has parental responsibility.

Myth 4

"If a woman has given up her job to stay at home and look after the children, she will be entitled to make a financial claim against her partner if they separate."

Unlike a married spouse, a co-habitee has no right to claim:-

- Money to cover living costs for herself (this is known as maintenance in England and Wales)
- Capital lump sums
- A share in her partner's pension

A woman may, in these circumstances be able to claim against his estate if he dies and she was financially dependant on him.

Myth 5

"If a woman pays the mortgage, she will be entitled to a share of the house that the partners have lived in for 10 years, even if the house is not in her name and there are no children."

Whether this is true or not depends on the circumstances, but it is likely that merely paying the interest on the mortgage will not be enough to gain a share in the house. Only those who are joint owners of a property, or have made one of the few contributions towards the property that a court will recognise, are entitled to a share in that property. Giving up a career and looking after the children or paying all the household expenses can count for nothing. The only contributions that a Court will consider, at present, are the following ones:-

- A direct contribution to the purchase price of the property.
- A significant contribution which is likely to increase the value of the house e.g. paying for a new conservatory.

This must be coupled with written proof that the work was done in reliance on a promise that the house would be owned jointly if a contribution was made.

Even making such a contribution may not result in the share of the house that the co-habitee expected.

The situation would be different if there are children.

Myths and the hard truth ...