



## Cohabitation Agreements - Protection for Unmarried Couples

There is a misconception that couples living together are in a 'common law marriage'. This is simply not the case and as a result cohabittees fail to safeguard their financial positions following separation or death.

When a marriage or civil partnership (same sex couples) ends or one partner dies, the rights of the parties are quite clear. This is not the case where couples only live together. When this type of relationship ends or one of them dies, the difference is alarming and can have very serious financial implications.

Under the current law, when unmarried couples separate they can, in certain circumstances, claim against the other persons property or assets. This process can involve very lengthy and expensive court proceedings to determine whether an interest exists and if so the value or percentage.

On the death of an unmarried partner, the remaining party is not entitled to receive anything from the "estate", unless they are expressly provided for in a Will. Furthermore, the remaining party will not benefit from the Inheritance Tax exemption that would apply if they were married or in a civil partnership.

It is possible for a claim to be made against the estate in limited circumstances under the Inheritance (Provision for Family and Dependants) Act 1975, which is designed to protect the dependants of people who die without leaving adequate financial provision for them. Again this can be a very expensive and time consuming process.

A cohabitation agreement is an easy and inexpensive solution. This is a contract, setting out the agreement reached for the division of the combined assets. It is sensible when cohabiting to enter into an agreement to regulate the ownership of assets. It can in particular protect family wealth or provide for children from previous relationship etc. These issues are not only important if the relationship breaks down but also when a partner dies.

Historically these types of agreements were held to be unenforceable on the grounds of public policy. This no longer appears to be the case following a recent ruling in December 2007 concerning a pre-nuptial agreement. The court held that the agreement was a factor of "magnetic" importance clearly showing the developing view of the courts in respect of agreements reached between the parties.

Cohabiting parties need to consider their positions, especially where properties are owned, children are involved or where there is a financial dependence. Wills and Tax advice are also relevant considerations.

For further information, please contact Miss Julia Korona E: [juliakorona@bwblegal.com](mailto:juliakorona@bwblegal.com)

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