

The Cohabitation Age

Safeguarding your future





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Setting the scene

Fifty years ago, most couples, keen to make their declaration of love and commitment official and to be perceived by society as 'doing the right thing', got married.

Often this happened fairly soon into the courtship.

Of course, times have changed. Today an increasing number of couples, many with children do not feel compelled to make it to the registry office or place of worship. For them it's enough to live together without signing a contract.

The latest figures published by the Office for National Statistics in their bulletin Households and Families revealed that the cohabiting couple family (both those with children and without) continues to be the fastest growing family type in the UK – in fact cohabiting couple families in the UK have doubled from 1.5 million families in 1996 to 3.3 million families in 2016. There were 3.2 million opposite sex cohabiting couple families and 87,000 same sex cohabiting couple families in the UK in 2016. Together, cohabiting couple families account for 17% of all families in the UK.



Kate Ryan

Head of the Family Law Department

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More and more couples are choosing to live together without the nuptials and it is inevitable that some of these relationships will come to end. Whilst those who marry, particularly if it is a medium to long term marriage, will be protected by the law and allowed certain rights, those who cohabit – even if it's for ten or twenty years – could be left high and dry.

Perhaps of greater concern is that many cohabiting couples believe that because there has been a huge increase in couples living together and a much bigger acceptance amongst society, the law has somehow caught up to make things fair and square. It hasn't. Although there is talk of introducing "safety net" legislation for the 3.3 million cohabiting families, we are still a long way off from seeing the proposed Cohabitation Bill becoming law.

This guide draws on research commissioned by Turbervilles Solicitors in 2017. The research was conducted by Atomik – an international research company, from a sample size of 1000 people (who are living with a partner) across the UK aged between 18-70.

We wanted to find out whether perception lags reality, over belief of rights they have as cohabiters. In addition, the research gauged views on what (if anything) they are doing to safeguard the future for their children and assets they may be sharing or contributions they have made.

Crucially, this guide aims to be informative and empowering, so couples know what steps they can take to get their 'house in order' should they ever split-up years down the line.



The Common Law Marriage – dispelling the myth

Common Law marriage is a term which has been bandied around for years. So ubiquitous is the parlance, that the majority of couples living together but not married believe that at some point during their relationship they will somehow earn the same legal rights as their married counterparts.

According to the research, 55% of couples believe this to be the case – three in ten couples believe they will have the same legal rights after living with each other for two years, whilst just under a fifth believe this to be the case if they cohabit for just six months or more. Only a fraction (6%) believe that having children cements a legal deal.

More than twice as many 25-34 year-olds (41%) compared to 55-70 year-olds (20%) in cohabiting relationships think that 'commonlaw marriage' is when a couple cohabiting for more than two years has the same legal rights as a married couple.

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Your Casa, My Casa – right?

We may all be familiar with expressions such as “what’s mine is yours and yours is mine” and “your casa, my casa”, however most couples won’t be presenting daily or weekly itemised bills to each other saying ‘I spent x on the shopping but you spent y on the kettle’.

Yet when it comes to ownership and contributions of the property, financial investments and possessions such as art or cars, too many couples leave themselves vulnerable to potentially huge losses should they split up.

Our research revealed that half of the couples own property and nearly half (46%) have financial assets including cash, shares and trade investments. Nearly half (42%) of those with financial assets hold **over** £100,000 in total, including 15% with assets worth £250,001 to £500,000. More than half (53%) revealed that they brought financial and property assets into the relationship which are now shared by their partner.

With the average house price in the UK hovering around the £207,000 mark (source: Nationwide) and nearly double that for properties in London and the South East, leaving matters of protection to chance and not putting agreements in place during the relationship could throw up all sorts of problems further down the line, should the relationship not work out or in the worst case scenario the split is acrimonious.

Yet, according to the research, more than three quarters of couples in the UK (77%) have not put any agreements in place to protect their assets or any contributions they have made. However there do appear to be regional divides for those that had – more than half in London had (53%) (possibly because they have more financial and property assets at stake) compared to 22% on average.

When asked for the reason for not putting anything legal in place, more than a third (36%) stated that they trusted their partner if ever they split up, following by a quarter admitting they just hadn’t got around to it. While trust and apathy are the core reasons behind the reluctance to seek a legal agreement, perhaps the false belief that there will be certain common-law rights is also playing a part in this.

Others cited they are too worried to talk about a Will with their partner or feel such a conversation would crush the romance. Some felt it was enough to have a Will in place. Whilst such provision will protect their partner should they die, this doesn’t take into account a split when both partners are alive.

Pensions

More than a third of couples (35%) cohabiting believe they have rights to their partner’s pension. Certainly, the younger the couple the more they feel they have a right to their partners pension; 42% of 25-34 years olds compared to 21% of 55-70 year old demographic.

What potential problems could arise?

No-one in a happy relationship wants to imagine the worse-case scenario of it ending. Or that their partner could somehow show a different side to their personality and refuse to provide for them or their children in the event of a split. Yet sadly, when it comes to matters of money, other assets and holding on to them, we often see the worst in people.

Let’s say a couple buy a property as joint owners but one of them puts in £30,000 more equity. The partner who has invested more will want to ensure that they have legal agreements in place should they choose to sell the property a few years’ down the line. This way they can ring-fence their £30,000. In the absence of a legal agreement the partner could lose this money as profits from the sale would be divided equally.

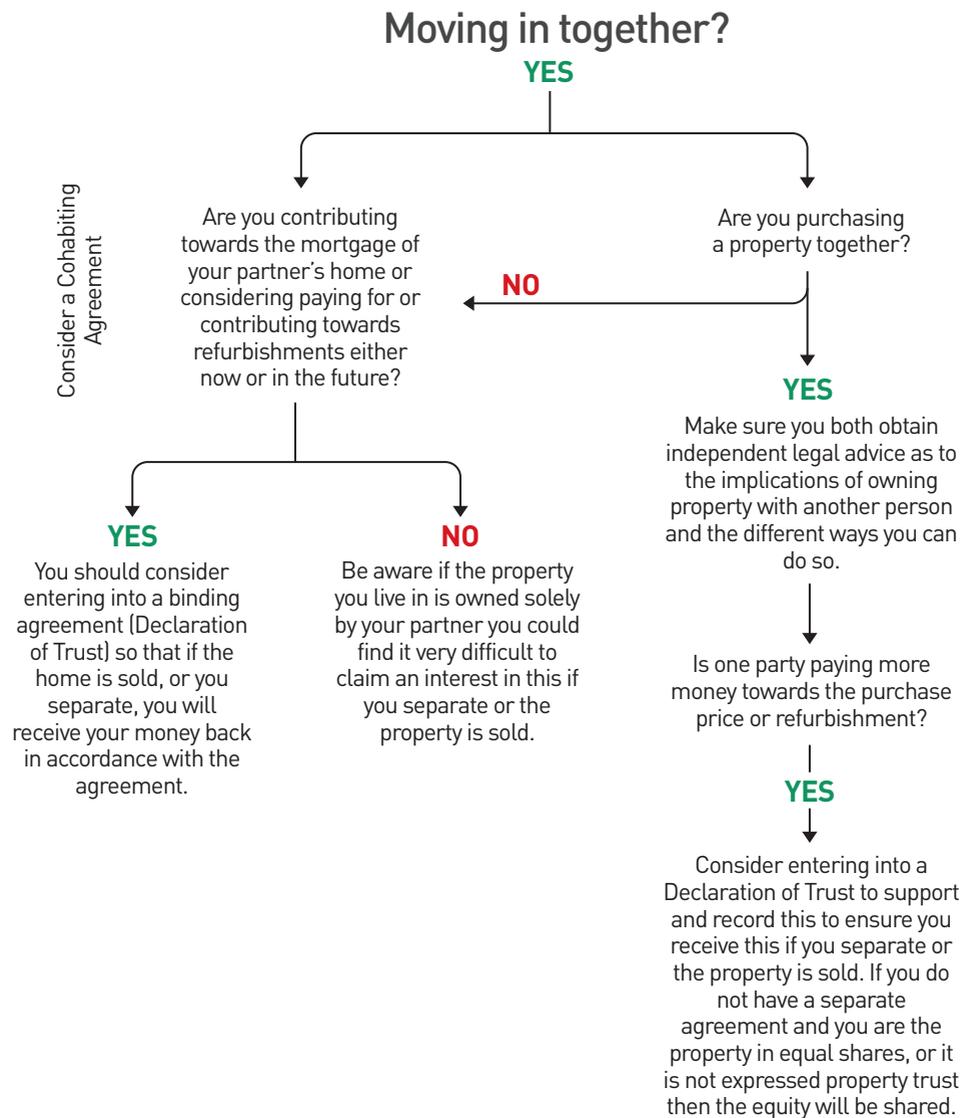
Other issues that could arise is when one partner is the sole owner of the property, but the other has made regular or adhoc payments towards the mortgage. Or perhaps paid out significant sums to the refurbishment or a possible extension to the home. Depending on the skills, there are cases where the non-property owner has been involved in large scale construction which meant the partner who owned the property has saved tens of thousands of pounds. Yet if the partner is not on the deeds and no agreement has been put in place, they could walk away with no rights to a share of the pot should the property be sold.

Other common place situations, is where one of the partners has given up full time work to become the home-maker – running the household, cleaning and in charge of all child-care. Again these contributions need to be factored, particularly if there has been a hiatus for many years which would mean getting back into the work-force immediately could be problematic.

Another challenging area which could arise is when the breadwinner or sole provider shirks financial responsibility for their ex partner and also the children, even refusing to set aside funds for renting or purchasing a property. There have been many cases where one partner (often the mother who has been the main carer for the children) refuses to give the father any access to the children.

Moving in together

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The Future

With a massive hike in couples cohabiting, current law has outgrown requirements of 21st century society. For some years there has been much campaigning to bring about parity of rights. There has been mounting pressure from Judges, Resolution and others in the legal professions to see that couples who move in together will be given the same legal status as their married counterparts.

At the time of writing, The Cohabitation Rights Bill has had its second reading in the House of Lords and is now at the Committee Stage. It aims to establish a framework of rights and responsibilities and provide basic protection for cohabitants, although they still won't get the same level of protection available to married couples.

Our research revealed that nearly three quarters (74%) believe that cohabiting couples should have exactly the same legal rights as married couples – Nearly a third (31%) believe that this should come into effect after two years of living together while 30% think it should be after five years or more.

The proposed legislation will allow cohabiting couples with children, or those without children who have cohabited for two years or more, the right to apply for a Financial Settlement Order. An applicant will need to show that s/he has suffered either an economic disadvantage or that their partner has retained a benefit as a result of a qualifying contribution they have made.

Conclusion – Forearmed is Forewarned.

Whilst some cohabiting couples will grow old and live together for the rest of their life, there will be others who will split up. Although it is likely that at some stage in the future, legislation will be passed so that couples living together will be afforded certain rights in line with married couples, there are likely to be caveats and exclusions.

For the time being - certainly in the short to medium term, cohabiting couples will need to cover all posts by putting in place additional legal agreements in place. Certainly couples are ill-advised to leave it to chance or make a leap of faith that their partner will support them after the split.

At the core of progressing agreements, couples need to have open and honest conversations, without hopefully fear of how the other partner will react or that it will crush the romance. Whilst one would not suggest putting the topic as number one on date night, finding the right time and place will hopefully prove conducive and, crucially, will lay the foundations of safeguarding for the future, even if couples continue to live happily ever after together.

Hannah's story

How a Declaration Trust gave her peace of mind



I've known my fiancée David since we were teenagers. In our 20's we started going out with each other and as the years went by we decided to get engaged and buy a two bedroom flat together. Whilst we both put in an equal deposit to buy our home, at the time I was earning significantly more than David and so was in a position to pay an additional £40,000 needed for complete refurbishment including putting in a new kitchen, bathroom and doing all the electrics.

However during the time our flat was being renovated, our relationship took a dive – we weren't getting on well at all. I had a real worry that if we split up all the money I had invested in the property would be lost – since we had 50:50 ownership of the flat.

Our relationship got back on track but I was keen to ensure I had peace of mind about my additional contribution. That's when I sought legal advice and we set up a Declaration of Trust to ensure no matter what happened, I would be entitled to my £40,000 before any profits of the sale were split down middle. This seem the fairest agreement for us, although we could have looked at me having a certain % of the profits from any sale since the money I invested for the refurbishment has made a huge difference on the value of our home.

I know people may worry that finances encroach on the romantic side of the relationship, but it's important to be practical and safeguard any major investment you make. No matter how brilliant the relationship is at the time and hopefully will always be.





About Kate Ryan, the author:

Kate joined Turbervilles' Family Department in 2007 and became a Partner in September 2009.

She deals with all aspects of divorce and separation, including the financial issues consequent upon relationship breakdown.

She acts on behalf of a broad range of clients advising on complex issues relating to businesses and limited companies, the family home and other matrimonial property, tax and pensions issues, which are often the main areas of concern for clients when dealing with a relationship breakdown. Kate is also an expert in mediation.

Kate also deals with the area of cohabitation and Trust of Land Act claims, and has experience in drafting and advising upon cohabitation and pre-nuptial agreements.



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