



I was travelling on a train recently and overheard a fairly

heated debate on this very subject. I was surprised to hear that the group reached the conclusion that, despite being unmarried, their friend was absolutely entitled to an equal share of her ex-partner's house, on the basis that they had been living together for 19 years and she had raised their 3 children. They referred to her as a 'common law wife'. The incident made me think about unmarried couples (or those not in a civil partnership) that live together (i.e. cohabiting couples) and the common belief in "common law marriage" laws that give them legal rights similar to those of married couples. This assumption by millions of cohabiting couples is wrong. There is no such thing as a "common law marriage", or a "common law spouse", or a "common law wife."

According to the Office for National Statistics (ONS), in 1996 there were 1.5 million cohabiting couples. By 2016, this figure had more than doubled to 3.3 million. As the fastest growing family type in the UK, it is concerning that there is little or no legal protection for cohabiting couples should they separate. What is even more concerning is that millions of cohabiting couples are unaware

# The Common Law Spouse: Fact Or Fiction?

that they are at severe financial risk as a result of the current system.

Resolution, which represents 6,500 family lawyers and other professionals in England and Wales, carried out a survey of over 2,000 British adults and found that two-thirds of cohabiting couples wrongly believe "common law marriage" laws exist when dividing up finances.

So, what is the difference between marriages or civil partnerships and cohabitants? The easiest way of explaining the significance of marriage and civil partnership is to compare the law for spouses and civil partners with unmarried couples who live together. Below are five examples where your rights will differ:

1. To enter or end a marriage or civil partnership, formality requirements must be met. There are no formal requirements to start or end cohabitation.
2. Married couples are under a legal duty to support each other; during a marriage one spouse can seek financial support from the other. There is no obligation for a cohabitant to support the other financially.
3. A father who is married to the mother of his child will automatically obtain parental responsibility but a man who is not married to the mother of his child will not, although they may acquire it by other means.
4. At the end of a marriage or civil partnership, the court has extensive powers to redistribute the couple's property and make maintenance orders, however, an unmarried partner who, for example, stays at home to care for children, cannot make

any claims in their own right for property, maintenance or pension-sharing.

5. When someone dies without a will, a spouse will automatically inherit all or most of the deceased's estate. If one cohabiting partner dies without leaving a will, the surviving partner will not automatically inherit anything (unless the couple jointly own property).

The pressure being placed on the Government for reform of the law is increasing with proposals that the law should provide legal rights to eligible cohabiting couples who separate. Until the law is updated, we would urge anyone in a cohabiting relationship to take steps to protect themselves. This could include drawing up a cohabitation agreement which sets out the parties' intentions for finances, property and the care of any children. Couples could also take out life insurance and draw up a will.

Neale Turk LLP are committed to the constructive and efficient resolution of family disputes. As members of Resolution, we subscribe to a Code of Practice which is geared towards encouraging a constructive and non-confrontational approach in all family matters. For more advice on cohabitation issues or the breakdown of a relationship, whether inside or outside of marriage, simply contact us and we will be pleased to advise you in a free initial half hour appointment.

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