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# *Fairbrother & Darlow*

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## *Solicitors*

### **Co-habitation**

More and more people are choosing to live together without getting married or entering into Civil Partnerships.

Many couples believe that they will automatically qualify for protection from the law if their relationship breaks down. However, their relationship with one another is not recognised as having any legal standing, and they have no special status in the eyes of the English legal system.

If you have been living together then you should be aware that there is no such thing in English law as a "common law wife/husband". If you live together you should consider your position carefully as you will not have the same legal remedies as those that are available to married couples if the relationship breaks down.

These are some of the essential things a couple, who are going to live together, should consider:

- Make sure that any property that you own, or tenancy that you hold, is held in joint names, in appropriate shares;
- Set up a simple Cohabitation agreement or Declaration of Trust;
- Make Wills.

### **Property Ownership**

It may not sound too romantic, but it is quite legitimate for unmarried couples to enter into an agreement when they start living together to try and cover any disputes on property if they should split up.

Unlike married couples, unmarried couples have no basic rights to their partner's property, nor to maintenance, if they split up. Generally, each party will retain any assets that they hold in their own names.

In the event of a separation, jointly-owned property will need to be divided. If a house has been bought in joint names then, usually, either party can force a sale of the property to realise their share. If the parties have not contributed equally to the purchase price, or to payments towards the property, then this should have been reflected by the parties having purchased the property as "tenants-in-common" and holding unequal shareholdings in the property (say 60% - 40%). If the parties intended to have equal shareholdings in a property then they will often have purchased it as "beneficial joint tenants".

If the property is in the sole name of one party then basically it remains that person's property on separation, unless the other party can establish that there was a common intention that they would be entitled to a share in the property.

If there are children of a relationship then, in certain situations, a Court may have greater powers to make orders in respect of a property, for instance to defer any sale. However, this is not guaranteed to be the case. This is a complex area of law and you should seek legal advice in connection with any such dispute.

### **Death**

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Another essential matter for unmarried couples to consider is that unless they make a Will in favour of their partner, then, should they die without leaving a Will, their estate will pass to their immediate family under statutory rules called “the intestacy rules”. A person may not inherit in the event of their partner’s death (except their share in the home, if they are joint owners and hold the property as beneficial joint tenants).

An unmarried partner may not even be entitled to administer their partner's estate, as they are not a relative of the deceased.

If your relationship is a serious one, then one of the first things you should consider is for each of you to make a Will. It can always be amended, changed or added to, but if there is no document at all, then the deceased's estate will simply pass to the appropriate family members or even the Government, rather than to the person's partner.

If you require assistance in connection with any matters arising out of your co-habitation with your partner please contact Fairbrother and Darlow.