

The myth of the **common law wife**



With one in six couples choosing to live together instead of marry, our love lives have changed drastically over the past few decades.

But the law has yet to catch up – Good Housekeeping reports on the legal loopholes, and what your family can do to protect themselves

Moving in together is supposed to be a romantic experience – choosing somewhere to live, merging CD and book collections, and picking furniture together. So it's hardly surprising that talk of bills, mortgage payments and deeds to the property very often get glossed over until later. Sometimes, until it's much too late.

That's exactly what happened to Laura* when she and her partner James* decided to live together. To Laura, the five-bedroom house they had bought was the first step towards marriage, children and growing old together, and she admits she didn't think much about the practicalities. The couple agreed that James would pay the mortgage and council tax – the house was in his name – and she paid for bills and food. 'When I asked him what would happen if we split up he'd say, "I'll make sure you're all right". It might sound naive but this was the man I loved and trusted, and we were so happy in the relationship so I didn't need any more reassurance than that – although I do recall feeling slightly uneasy later.'

Then, after 18 years together, when marriage and children had failed to materialise, the couple split. 'I wrote to him to ask if we could discuss the house, which was worth much more than when we'd bought it,' says Laura, 50.





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It took Laura a year and a £15,000 legal bill to get an out-of-court settlement of around £35,000, which was far short of what she'd hoped for. 'I got something out of it, but was it worth it? With hindsight, I'm not sure. It took a huge toll on me emotionally and physically and really affected my health.'

Laura, like so many women, had fallen into the Living Together Trap. Because even though more couples than ever before are choosing to move in together before – or instead of – getting married, the law itself barely recognises cohabiting couples. When a living-together relationship ends, ownership of any assets is decided by property law rather than divided up by the courts as with divorcing couples. 'People use the phrase "common law wife" all the time,' says family lawyer Lisa Pepper. 'But in reality there is no such thing. There is very little to protect women if they are unmarried and they split up, or their partner dies. The reality is that women living with a partner often don't know what they don't know until it's too late.'

The myth of the common law wife runs deep – in an exclusive Good Housekeeping survey**, more than 50% of women believed that cohabiting couples won the same rights as their married friends after living together for a number of years. When you consider that 2.8 million unmarried couples live under the same roof in England and Wales – up from 2.1 million in 2001 – that's a lot of women who don't know their rights.

Last autumn, it looked like things might change. The Law Commission had put forward proposals to give more rights to couples who were living together, but the Government shelved the plans, which means

unmarried couples are still in a kind of legal no-man's-land. 'For now, change looks as far off as ever,' says Pepper. 'There seems to be little political appetite to narrow the gap between the rights of cohabiting couples and those who are married.'

At the end of last year a landmark court ruling confused things even more. The Supreme Court awarded a woman 90% of the house value of the Essex property she'd owned jointly with her ex-partner, because he had moved out 18 years before and hadn't contributed to the mortgage since. The whole law, as one commentator put it at the time is 'clear as mud'.

And when a couple has children and one partner becomes the breadwinner, things become even more complex. Kelly Chandler, 46, and her partner were together for 10 years, and she gave up her career to look after their son and two daughters from a previous relationship. 'We'd just never got around to getting married,' she said. 'And you just don't think about what you'll get if it goes wrong.'

Kelly and her then partner were what's known in law as joint tenants, which means they both owned the property together, so when they split up she was entitled to half. But having put her work life on hold to raise the family, Kelly felt she needed more. She found she had no right to any of her ex's earnings or pension or any other assets, such as the holiday home in Spain he bought while they were together. After three years the couple reached an out-of-court settlement in which she could hold a share of their British house in a trust for their son, but it cost her £25,000 to get that result. And during the legal wranglings, Kelly moved into a rented home and returned to her career in recruitment.

WHY WILLS ARE A MUST-HAVE

If a partner dies without making a will, the person left behind is facing a grim reality – at worst it leaves some women in the position of packing their bags and moving out of their home. But if the property is owned as joint tenants, the bereaved partner would inherit it. However, in a fine legal distinction, if it's owned as 'tenants in common' – where each holds a

separate share of the property – that share would go to 'next of kin', which won't necessarily be the partner. It may be possible to make a claim, but, says Pepper: 'Who wants an expensive, stressful battle when you're grieving, and when there's no guarantee you'll win? Take the opportunity to sort out this legal situation now: have a chat with your other half and

More than half of us think cohabitees get the same rights as married couples after living together

FALSE

[CONTINUED FROM PREVIOUS PAGE] draw up wills that make both your intentions clear – and get a declaration of trust drawn to show you have an interest in the property. If you don't, you really are leaving yourself in a vulnerable position.' There is also tax to consider. Money and property left to a spouse is free of inheritance tax, but cohabiting partners still have to pay 40% on anything worth more than £325,000. Another important – and heartbreaking – reality is that if a woman is pregnant when her partner dies she can't automatically put his name on the birth certificate.

SECURITY WITHOUT SAYING 'I DO'

The best way to deal with the Living Together Trap is to communicate with each other. 'It's a difficult conversation to have,' says Sarah Pennells, founder of money website www.savvywoman.co.uk, 'but it's far easier to have when you like each other than when you're in the middle of splitting up.' She advises setting up a 'money date', when both partners can discuss the issues.

When talking about money, Pennells says, couples should ask themselves: where do they see themselves financially in future? What do they like and dislike about the way their partner manages money? And what happens if the relationship ends or one partner dies?

One woman who decided to tackle the issue head on is Sam Lyle, 36. She has lived with her partner Mark for six years, but she doesn't want to get married on principle. 'It grates with me and what I believe in,' she says. She is worried that many couples feel forced into getting married because they have so few rights when they live together, and she wishes that she and Mark could mark their relationship with a civil partnership. 'Without that, I do feel at a real disadvantage. Why should Mark's rights and mine be less protected than our married friends?'

Sam and Mark talked frankly about money early on in their relationship, writing down how they would split their finances, and friends signed it as witnesses. They updated the document when their son Charlie was born. They own their property jointly and have life insurance naming each other as the beneficiary. 'We also promised each other we would make wills, but we still haven't got round to it,' she admits ruefully.

Sam is going in the right direction, but, at this time, getting married is still the simplest way to protect your rights. 'Ultimately,' says Pepper, 'until the law changes, nothing protects you like a marriage certificate.' □

41% of women believe that if you pay into a partner's mortgage for more than five years you're entitled to a share of the house

FALSE

The GHI guide to smart cohabitation



- Get property savvy. If you own the property as joint tenants, you'll be entitled to half if you split up. If you own as tenants in common it means you own your shares of the house separately rather than jointly, so you'll only be entitled to your share. Make sure you're on the Title as legal owner of the property, or draw up a Deed of Trust with a solicitor, so that you'll have a legal document showing you have an interest in the property.
- Draw up a cohabitation agreement. This can cover the mortgage, bills, joint accounts, car ownership and joint credit cards. But note, unlike the Deed of Trust mentioned above, it carries no legal weight.
- Draw up wills. Make it clear that you want each other to inherit. It's easy to do, and doesn't have to be expensive – and could save a lot of heartache.
- Make each other your next of kin. The phrase itself doesn't automatically mean the person most closely related to you, so you can formalise your partner as next of kin by downloading a card from www.advicenow.org.uk/living-together to make it official.
- Do your research. The law is slightly different in Scotland, where couples enjoy certain legal rights and protection. To find out your rights there, go to www.scotland.gov.uk and search under 'cohabitation'.

