

# Unmarried couples need to protect themselves

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A landmark victory in the Supreme Court has seen a Northern Ireland woman win a share of her former partner's pension, with commentators saying it's likely to add impetus to the drive for greater rights for unmarried couples. But, in the meantime, cohabittees should face up and formalise arrangements, rather than keeping their fingers crossed.

The victory of Denise Brewster involved her claim for a survivor's pension after her long-term, live-in partner Lenny McMullan died suddenly, shortly after they had become engaged. He had paid into Northern Ireland's local government pension scheme but had not completed the necessary form to nominate a cohabiting partner for a survivor's pension. Denise Brewster took legal action to claim the pension and when her case reached the Supreme Court, the judges ruled that the refusal to pay her was unlawful.

Such difficulties play out all too often for cohabiting couples, whether in relation to shared property or what happens to their assets when they divorce or die. Many still believe in the idea of so-called 'common law marriage', assuming they have legal rights like married couples or civil partners on death, only to discover the harsh truth when problems arise.

Currently, securing protection requires action to be taken by the couple, if they wish to ensure that the interests of both parties are protected in case of death, separation or other life changes.

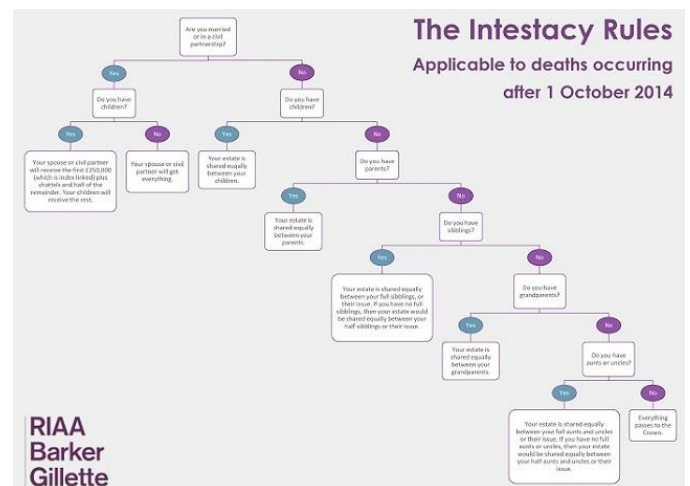
Our [family](#) partner, [James McMullan](#) said:

*"It may seem unfair, but cohabiting couples do not have the protection that comes with marriage or civil partnership. There are three main areas where couples should look to protect themselves, and each other, and that's with a cohabitation agreement, formalising how*

*property is owned and each making a will. These all help to avoid uncertainty and come into their own if the worst happens."*

## Making a Will

Without a valid Will, the division of assets belonging to a cohabitee will be decided by the Intestacy Rules and under these a cohabiting partner will not be included. Typically, the whole of their estate would go to children, or if they have none, to parents or other family members.



*Applicable to deaths occurring after 1 October 2014*

Although the surviving cohabitee could apply for "reasonable financial provision" under the [Inheritance \(Provision for Family and Dependents\) Act 1975](#), this would be a very slow and potentially expensive option, and in the meantime, they may be blocked from living in the couple's home if it was not held in shared ownership.

## Inheritance Tax

Writing a Will is also a good time for couples to consider inheritance tax implications, as they will not benefit from the exemption given to gifts between spouses and civil partners. Also, unlike a married couple or civil partners, the first-to-die's nil rate band cannot be transferred to the survivor.

## Property Ownership

Regarding property ownership, our [residential property](#) partner [Mark Lyon](#), reiterated that if a couple buy a property together, or agree that one has become entitled to a share, then it is important that ownership is structured to reflect this and the intentions of each upon death. Such ownership needs to be recorded and formally documented, and ideally recorded with the Land Registry. If property is owned as 'joint tenants', there are two consequences:

1. the couple are electing not to own separate defined shares in the property and if anything is done to bring the joint ownership to an end, the couple will own the property in equal shares.
2. Upon the death of one, the whole property will pass automatically to the other regardless of the intestacy rules or any Will.

If, however, property is owned as tenants in common, then each will own a specific share - which can be in any proportions, by any agreed calculation – and each is free to choose what will happen to their share of the property on death. This aspect should be considered when a Will is written as well, as someone may wish to leave their share to children, but with the survivor having the right to continue living in the house until their death or relocation.

## Cohabitation Agreements

A formal agreement setting out what will happen if a couple separate, this can also set out day-to-day matters, such as who is responsible for household expenditure and in what proportions. As well as helping to settle disputes when a relationship ends, by referring to the original intention, it can be a useful process to clarify matters before a couple move in together, by encouraging discussion and agreement over the detail. It should be drawn as a deed, independently witnessed and with both parties able to demonstrate there was no duress and each could seek independent advice, if required. A cohabitation agreement may be set aside or varied by the courts if the circumstances change, for example if the couple have children, so it is important to regularly review what has been put in place.

For more information, contact James McMullan or Mark Lyon today.

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