

Cohabitation

There is a popular belief that couples who live together become “common law” husband and wife. There is however no such legal status. While marriage is on the decline, cohabitation is becoming an ever-popular arrangement. What many people are not aware of is that the rights afforded to married couples upon a marriage breakdown, and the legislation used to deal with financial arrangements, are not the same as those for couples who live together. When a cohabiting relationship comes to an end, cohabitants are limited to property law. In this fact sheet we explain the position for cohabiting couples in relation to property, other assets and liabilities, maintenance and inheritance. Any cohabiting couples with children should also read our private law children fact file.

Property

The home in which a couple live is often the main asset. The extent of your interest will depend upon whether you are registered as a legal owner or not. You will have a legal interest if you are named on the title deeds of the property or if you are not named and the property is held in your partner’s name only you may be able to establish a beneficial interest.

Legal interest

If your name is on the title deeds then you will hold the property as either joint tenants or as tenants in common.

If you own the property as joint tenants you will hold the property in equal shares, regardless of financial contributions. On death your share will automatically pass to the other owner, regardless of the terms of your Will and will, depending on the size of the estate, be subject to Inheritance Tax.

If you own the property as tenants in common you will hold it in equal shares unless there is a Declaration of Trust expressly stating how the ownership is to be divided. On death your share will pass in accordance with the terms of your Will. In the absence of a Will your share will pass in accordance with the Intestacy Rules and will pass to parents, children, siblings etc.

Beneficial interest

You may be able to establish a claim to the equity even if you are not a legal owner of the property. To establish a claim you will need to show that you have contributed financially towards the property, either at the time of purchase or subsequently, that there was an intention for you to obtain an interest and that you have acted to your detriment (for example making a contribution to the mortgage payments or undertaking significant home improvements).

Other assets & liabilities

If there are joint bank accounts or other joint assets these will be shared equally.

If there are joint debts these remain a joint liability. Debt companies and courts will not be concerned with who has had the benefit of the funds but are likely to pursue the party most able to clear the debt. Debts taken out in your sole name will remain your responsibility, even if the funds had been used for a joint purpose.

Other assets or contents will normally remain with the party who paid for them. If there is a dispute, you would be advised to go through the small claims court. This is only worth pursuing if you can establish it was given as a gift or if you have proof of ownership.

Cohabitees have no rights in relation to their partner’s pensions on relationship breakdown.

Maintenance

Cohabitees are not able to claim maintenance. In relation to children, please see our private law children fact sheet.

Inheritance

In relation to property this will depend on whether it is held as joint tenants or tenants in common. Otherwise a cohabitee will have no rights to inherit anything unless the deceased has made provision in their Will. Any inheritance received will, depending on the value of the estate, be subject to Inheritance Tax.

Some pension companies may make provision for a cohabitee if they can show they were financially dependent on the deceased.

Ways you can protect your position

Deed of trust

If the property is to be held as tenants in common the shares in which the property is to be held must be specified on the conveyance or in a separate Deed of Trust. This sets out the agreement between the parties including whether they hold the property in equal or unequal shares, their intentions and the purpose for which the property is purchased (e.g. a home for the couple or as an investment). This should be drafted at the time of purchase but can by agreement be drafted at a later date.

Severance of joint tenancy

If the property is owned as joint tenants you can sever the joint tenancy. You can sever by agreement and then enter into a Deed of Trust to specify your shares in the property. Alternatively, you can sever without agreement by serving your co-owner with notice of severance. You can then enter into a Will to dictate where your share will pass on your death.

Cohabitation contract

This is a contract between two people who live together, providing a framework to be used on separation and records their intentions as to how to deal with financial and property issues. The agreement should only deal with financial and property matters, such as who will pay the mortgage, utilities and intentions regarding the purchase of joint assets and whether any maintenance will be payable on a relationship breakdown.

Registration of a restriction

If you are not the legal owner of the property but do have a beneficial interest you may be able to apply to the Land Registry for a restriction to be registered against the title to the property. This will stop the legal owner selling or otherwise dealing with the property without your prior notice and removal of the restriction.

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FAMILY LAW

For advice on cohabitation deeds or any other family matters contact **Gorvins Solicitors Family Team** at:

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