

LIVING TOGETHER - COHABITING



With the number of cohabiting couples increasing, it is important to understand the legal framework which may affect your relationship. A cohabiting couple is a same-sex or opposite-sex couple who are not married or in a civil partnership.

When cohabiting, neither party has any legal status as a common law husband or wife. Such terminology is only the jargon of social commentators and analysts. Even if you have been living together for a long time, you may not have many rights and any rights you do have will not be the same as if you were married or in a civil partnership.

It is important to understand any financial commitment you make to your partner when cohabiting. We speak to numerous callers who are about to cohabit with a partner and those who are cohabiting and wish they were not. In either case, an understanding of the legal context is key to managing ongoing expectations.

Cohabiting without being married or in a civil partnership can affect you:

- property rights
- rights concerning children
- inheritance rights

Cohabitation agreements also known as living together agreements

Many people we speak to are unaware, they can enter into a cohabitation agreement. It is designed to deal with property and assets acquired before

and during your relationship, as well as what happens if you separate. A cohabitation agreement is a legal agreement reached between an unmarried cohabiting couple who wish to sort out their finances in the event the relationship breaks down.

A cohabitation agreement is a legal agreement reached between an unmarried cohabiting couple who wish to sort out their finances in case the relationship breaks down. The agreement covers such things as property, savings, shares and debts. Signed by both parties, the agreement is designed to prevent arguments and reduce the need to become involved in lengthy and expensive court proceedings in the event that the relationship ends. It can constitute a contract provided it complies with general contract law and is signed by both partners.

Your property rights

Cohabitors have particularly complex issues when it comes to property law. You can live with a partner, family member or just a friend and the same property law principles will apply. These principles do not have the same flexibility as those applied when a marriage or civil partnership breaks down and in some cases can therefore be quite harsh.

Property ownership

When buying a property to live in with your partner, it is advisable both of you have your names on the deeds. There are generally three types of property issues that arise:

The property is owned by one partner only
In these circumstances the starting point is that the owning partner is entitled to the whole asset and is not required to share any of the proceeds of sale should the property be sold. Furthermore, if you are the occupying partner (not the owning partner) you may have only limited rights, if any, to live there. In some cases, it is possible for the occupying partner to make a claim for a beneficial interest in the property i.e. an interest in the value of the property. This is done through what is known as a constructive or resulting trust. To be successful you will have to show either there was always a common intention that the property would be jointly owned or that you have made a significant contribution towards the purchase price or directly towards the mortgage. Contributions towards living expenses and outgoings for the property will not generally be enough.

These are particularly complex areas and can involve significant expense to make a claim. For further advice and guidance please contact the helpline.

The property is owned by both parties as tenants in common

A property owned as tenants in common means that the property is in the joint names of both parties but it is agreed that the value is in divided shares such as 50/50 or 60/40 etc.

If a property is owned by you and your partner as tenants in common it is usually the case that the shares of ownership may be unequal i.e. not 50/50. This may be because there is a need to try and protect previously acquired assets. This can often be the case if one of you has greater assets than the other and wishes to 'ring fence' that amount in the event that the property is subsequently sold.

If you cannot remember if you own the property as tenants in common you will need to obtain a copy of the title deeds. You can do this [here](#).

Once you can view the title deeds you will need to identify whether a restriction is shown on them. If there is a restriction registered against the title it is

likely you are tenants in common. In this case there may also be a separate document known as a trust deed. This is usually signed at the same time as the property is purchased and details the shares each party has in the property. If there is no trust deed it will be assumed each party has an equal share. Importantly, for this type of ownership, should either of you die the surviving partner does not automatically inherit the deceased partner's share of the property. The survivor will only inherit that share if they do so under a valid Will. A cohabiter has no rights to inherit the property under the intestacy rules i.e. where there is no Will. Therefore, if one of you should die without leaving a Will, it is very likely the surviving owner may have to sell the property to ensure those entitled to a share of the property receive it.

The property is owned by both parties as joint tenants

If the property is owned by you and your partner as joint tenants, it means you own the property in undivided shares and any sale proceeds will be divided equally. This is the most common type of property ownership, and the key concept is the right of survivorship. If either you or your partner die, the property automatically transfers to the survivor and the deeds can be amended. This is the case even if the joint tenant states something different in their Will.

It is possible to 'convert' a joint tenancy to a tenants in common arrangement by 'severing' the joint tenancy. This involves serving a notice of severance on the other joint owner and the registration of this at the land registry. Further help to do this can be found [here](#).

It is equally possible to change from tenants in common to joint tenants. This may be done for tax planning or family related reasons. For more information or assistance please call the helpline.

Renting a property

If you are cohabiting in a rented property, the same considerations of ownership will clearly not apply. Your rights may depend on the type of tenancy you

have. Where you are private joint tenants and have what is known as an assured periodic tenancy (APT), neither party has a greater right to occupy the property or takeover the tenancy. Where you intend to separate, it is usual to agree with your partner what will happen or to approach the landlord for consent to release one party from the tenancy. Alternatively either party could give 2 months notice to end the tenancy. How this is resolved will often depend on the ability of either party to continue to pay the full rent.

For council or housing association tenancies, there may be different options as these types of tenancy are more secure and are referred to as secure tenancies. In these cases you should first approach your landlord for information about what may be possible. If it is agreed that you or your partner will leave then it is possible to assign (sign over) the tenancy.

What happens when there is a dispute about the property?

We frequently speak to callers who may be living with their partner and want them to leave or who may have left the home but the other partner does not want to leave the home and sell the property.

This can be a difficult situation. Many have:

- lived in a house belonging to their ex-partner, who may also be still living there.
- lived in a joint property and want the other party to leave.
- bought a property with a friend, relative or partner, fallen out and now want to sell.
- made a contribution to the purchase of a property but have not recorded their share and now want their money back.
- lived in a house for a long time which is jointly owned and suddenly, after a lengthy time, their ex-partner wants their share.
- lived in a house belonging to their partner and want to know if they are entitled to a share.

Everyone who faces such a situation wants to know where they stand. It is one of the most frequent

questions the helpline is asked and one of the most difficult to answer as the law can be both complex and vague on these issues.

The options available often depend on your financial circumstances and the cause of the disagreement but below are some instances of what can happen: If your partner does not want to leave the property, the remedy is dependent on whether or not you are a joint owner.

If you are not a joint owner of the property, your partner can ask you to leave and must give you reasonable notice to do so. Reasonable notice is generally 14-28 days.

If you are a joint owner, it is not possible for one party to force the other to leave the home. The locks cannot be changed, and you are not allowed to prevent your partner from entering the property. In some circumstances, if there is violence, or threats of violence to you or any children who live with you, it may be possible to apply for an occupation order. For further information or assistance please call the helpline.

If your partner does not want to sell the property, it can be difficult to know what to do next. If the property is not sold you will remain liable for the mortgage repayments and often are not in a position to move on. The helpline speaks to many callers where one party is refusing to co-operate with any suggestion to resolve the situation.

In these circumstances it may be possible to apply to the court for an order that the property is sold. This type of action is known as a claim under the Trust of Land and Appointment of Trustees Act 1996 (TOLATA). Very often just the fact that this action is possible is sufficient to persuade a reluctant partner to agree to the sale.

If your partner does not want to sell the property but wishes to buy you out, this is an option which is often quicker than an agreed sale and certainly quicker than a court application under TOLATA. This process is known as a transfer of equity and will generally require the consent of your lender if the property is mortgaged.

The lender may charge a fee for agreeing to this transfer and producing the relevant documents. The effect of this procedure is that one partner remains in the property and becomes responsible for the mortgage and all other outgoings. The other partner receives their share of the value of the property, after deduction of the value of any outstanding mortgage, and is released from any further liability for the mortgage and other outgoings.

If you rent your property as tenants and there is a dispute about the occupation of your home because your partner will not leave, it may be possible to apply to the court under the Family Law Act 1996. The application can be made if the tenancy is solely in your name or your partner's name.

As long as the tenancy relates to a property which is or was the family home, the following tenancies can be transferred:

- secure tenancies
- introductory tenancies
- assured tenancies
- assured periodic tenancies
- protected and statutory tenancies under the Rent Act 1977
- agricultural tenancies

Whilst it is possible to make this type of claim for an assured shorthold tenancy, it is very unlikely that this would be appropriate as these types of tenancies are generally short term and are likely to expire before any court application would be heard.

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Parental rights

An unmarried father does not have the same automatic parental rights in relation to his child or children as an unmarried mother.

What are parental rights?

Defined in law as 'all the rights, duties, powers,

responsibilities and authority which by law a parent of a child has in relation to the child and his property'. These are the basic rights required to raise a child and include the right to:

- decide on day-to-day care
- give consent for medical treatment
- decide on a child's religion
- decide where a child lives
- decide on a child's education

Fathers of children born to unmarried parents have enjoyed equal parental rights to those of the mother provided their name appears on the birth certificate. For children whose father is not on the birth certificate, parental rights are not automatic. In those cases it is the mother who automatically has those rights granted by law.

If you are an unmarried father who does not have automatic parental rights there are two ways these can be acquired. These are by agreement with the child's mother or by application to the court.

Parental responsibility agreement

You can enter into a parental responsibility agreement using the form [here](#).

As parents you will need to complete the form making sure your signatures are witnessed. Then the completed forms must be lodged with the family court. The process is completed once the high court has received them. A stamped copy of the form will be returned to you.

Parental responsibility order

If the mother of your child does not agree to give you parental responsibility it may be necessary to apply to the court for an order to be made. To do this you will need to complete the necessary form C1 see [here](#) and pay the necessary fee.

If you are considering any other child-related application, such as contact or residence (now known as a child arrangement order), you will firstly need to have parental responsibility either by agreement or application.

Your inheritance rights

Unmarried partners have no automatic rights to inherit their partner's assets if there is no Will entitling them to do so. The law relating to intestacy (see where there is no Will [here](#)) only recognises a spouse and other family members. If you live with your partner who dies without leaving a Will:

- you will not automatically inherit any property or other assets held in their sole name.
- you will only automatically inherit property where you are joint tenants. This will include joint bank accounts.
- you will not automatically inherit their share of a property owned as tenants in common.
- you may have to make a claim under the Inheritance (Provision for Dependants and Family) Act 1975 to make a claim on the estate. This allows a claim to be made against your partner's estate if you have been maintained by your partner during their lifetime. However, this is a complex area of law and further advice should be taken.
- children of the partnership may automatically inherit any assets in preference to any interest you may have or be able to claim.

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