



Cohabitation

Overview

Couples who live together are often under the mistaken belief that they are “common law” husband and wife and that therefore they have the same rights on a relationship breakdown as a married couple. There is however no such legal status. Couples who live together have hardly any of the legal rights that a married couple do. If you have children with your cohabitant then we suggest that you also read our children factsheet.

Your Home

If your name is on the title deeds of the property then you will hold it as either joint tenants or as tenants in common. If you own a property as joint tenants then you will own the property in equal shares. If you own a property as tenants in common then your entitlement will depend upon whether or not there is a declaration of trust. This is a document confirming how the equity will be divided between you. If there is no declaration then your entitlement will have to be determined on the basis of your financial arrangements. This will include consideration of your respective contributions at the time of purchase, payments for the mortgage or household bills etc. This is a complex area of law and therefore you should seek advice from a solicitor. Even if you are not named on the title deeds you may still be able to establish a claim to the equity. To do so you will need to show that you have been promised a share or contributed financially towards the property, either at the time of purchase or subsequently, and that there was an intention for you to obtain an interest and that you acted to your detriment (for example making a contribution to the mortgage or undertaking home improvements).

If you rent your home then only the person in whose name the tenancy is in will have the right to remain in the property.

Other Assets and Liabilities

Any assets held in joint names (such as bank accounts) will be owned equally. If however, you have contributed different amounts to an asset, you will own the same proportions as your contributions. For any assets held in your sole names this will remain your sole property. This will also be the case in relation to your liabilities. In relation to a joint debt the debt company will not be concerned with who has had the benefit of the funds but will pursue the party most likely to be able to clear the debt. Gifts will remain the property of the person to whom the gift was made. Cohabitants will have no right to a partner’s pension or be entitled to claim maintenance (a regular monthly payment to help with living costs).

Death

If you own a property as joint tenants then on death the property will automatically pass to the survivor of you, regardless of what is said in your

will. If you own the property as tenants in common then the property will pass in accordance with the terms of your will. If however you do not have a will then the property will pass in accordance with the rules of intestacy. Cohabitants will not automatically inherit from one another, and will not inherit from one another under the rules of intestacy. Therefore the only way you can provide for one another on death is to make a will.

Ways you can protect your position

At the time of purchase or subsequently by agreement you can specifically declare your entitlement to the equity. If you are buying together this can be done on the transfer deed or if only one of you is buying, or if you decide to change your ownership after purchase you can enter into a deed of trust. If you currently own your property as joint tenants you can sever the joint tenancy. This can either be by agreement or unilaterally by serving notice on the other joint owner. You can then enter into a deed of trust and/or enter into a will to specify where your interest will pass on your death. If your home is rented then you may want to consider transferring the tenancy into your joint names. You can also consider entering into a cohabitation contract. This is a contract which provides a framework to be used on separation and can specify how the house and other assets will be dealt with. It can also include maintenance payments and who will be responsible for debts etc.

If you do not want to enter into a cohabitation contract and you are not the legal owner but do have a beneficial interest, you may be able to apply to the Land Registry for a restriction to be registered against the property. This will stop your partner selling or otherwise dealing with the property without prior notice.



Contact us

Please feel free to discuss your own position and concerns. Contact your nearest Russell Jones & Walker office or call:

Call: 0800 916 9055
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