

Family



Common Questions about Cohabitation & Property

- ▶ Understanding the benefits of cohabitation agreements financially, futureproofing your relationship and the legal limitations for unmarried couples

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Common Questions about Cohabitation

How can I own a property with my partner?

You can own a property in two ways: as Joint Tenants or as Tenants in Common.

Owning as Joint Tenants means that you own 100% of the property together with your partner. When you pass away, your share within the property will automatically pass to your surviving partner, regardless of what your Will says.

Owning as Tenants in Common means that you own the property in defined shares. When you pass away, your share will pass under the terms of your Will or rules of intestacy, not to your surviving partner automatically.

If you separate from your partner but still own a property together as Joint Tenants, we recommend that you seek legal advice about severing the joint tenancy, to become Tenants in Common.

If you plan to contribute more towards the deposit when purchasing a property with your partner, we recommend that you seek legal advice about a Declaration of Trust and/or Cohabitation Agreement, to protect your interest.



Common Questions about Cohabitation

I am not married to my partner. We have been together for a while and we own a property together. If my partner died, would I automatically receive a share of the property?

As explained above, this would depend on how you own the property with your partner. If you own the property as Joint Tenants, it would pass to you automatically.

However, if you own the property as Tenants in Common and your partner does not have a Will in place to ensure their share passes to you, their share would pass under the rules of intestacy which could mean that it would pass to any children they have or to their brother or sister.

Unmarried couples do not share the same rights as married couples and are not a category under the rules of intestacy, though the surviving partner may have a claim. If you own a property as Tenants in Common, you should consider ensuring your Will is up to date.

What is a Declaration of Trust and how could it assist me?

A Declaration of Trust is a legal document, explaining who owns an asset and in what proportions. It is a useful document to have to assist with situations like separation or sale of a property. This document can be prepared at the time of you purchasing your property and you may choose to speak to your Conveyancer about this.

A Declaration of Trust could assist you because it would protect your contribution to a property in the event of a breakdown in the relationship. It will assist to minimise any confusion about who has contributed and in what proportions.

When setting up a Declaration of Trust, we would strongly recommend that you consider making a Will to ensure that your share of the property passes in accordance with your wishes.

A Declaration of Trust does not become invalid if you marry your partner. It still operates as a legal document, but the Court only has to consider this as one of the circumstances of the case within divorce proceedings and is not bound by its terms.

Common Questions about Cohabitation

I live in my partner's home which is owned in their sole name. We have recently separated. Do I have any rights to claim against their property?

The general principle is that the ownership, and the rights of those living in the property is determined by the legal title. Therefore, if you are not recorded as an owner of the property, the Court will presume you do not have a legal interest in it.

If a Cohabitation Agreement is in place setting out your interest in the property, this might be used as a persuasive document.

We would recommend that you seek legal advice if you are in any doubt as to your interest in a property, to understand your circumstances further.

My partner and I are trying to resolve a property dispute, but we are finding it difficult to agree on our own. What are the options available to me?

There are several different options available to you, to try and reach an agreement amicably:

- Direct negotiations (discussions between the parties directly)
- Mediation (round table or shuttle meetings between the parties with a Mediator to assist in helping you reach agreement or narrow issues)
- Solicitor correspondence (negotiations between the parties communicated through their respective solicitors in writing)
- Court proceedings

Court Proceedings relating to property disputes can be stressful, expensive and time consuming. We would recommend that the alternatives are properly explored first, before consideration is given to issuing Court Proceedings.



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Common Questions about Cohabitation

I am currently living in the property which is owned jointly. I am the sole occupier and my ex-partner is living somewhere else. My ex-partner has asked for me to pay 'occupational rent'. What does this mean?

The "Occupational Rent" argument usually arises when two people own a property together and following the breakdown of their relationship one party remains in occupation to the exclusion of the other.

The person who remains, has the benefit of occupying the property solely, without the other being present and to reflect that the person has full enjoyment of the property, the ex-partner could ask that they pay half of the usual market rent.

However, in practice, the "Occupational Rent" argument is often cancelled out by the person occupying asking for contributions towards mortgage payments.

As a compromise, it is usually accepted that the person occupying will pay the full mortgage payments and not pay occupational rent to the person who is excluded.

Is there such a thing as a common law spouse?

The term "common law spouse" does not exist.

If you are not married, you do not have the same legal rights as married couples. There is no legal mechanism that an unmarried person can use to make a claim against their ex-partner's income or pension rights.

The only applications that can be brought by an unmarried person against their ex-partner relates to property owned by them. Claims can also be brought for the benefit of any children of the relationship.

Common Questions about Cohabitation

My partner and I have separated. I stayed at home to raise our children whilst they went to work. Can I make a financial claim against their income or pension?

Unmarried couples do not have the same protections and rights as married couples.

There is no legal mechanism that an unmarried person can use to make a claim against their ex-partner's income or pension rights for themselves, but it may be possible to make an application for income or assets for the benefit of children.



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Common Questions about Property

I am married to my spouse who owns our home in their sole name, do I legally own this through marriage?

The legal title to the property will determine the legal ownership of the property. It is important to obtain a copy of the legal title to any property owned at an early stage.

If the property title is owned by your spouse in their sole name, you do not have an automatic legal right because you are married. If they want to add your name to the legal title, we recommend that they seek legal advice about this.

If you were to divorce, the family home would be considered by the Court as a matrimonial asset. The application of the law in respect of division of assets within divorce proceedings is bespoke to individual circumstances. We recommend that you seek specialist legal advice.

If you are in the process of separating from your spouse, we would recommend that you consider applying for a Matrimonial Home Rights Notice to be registered against the property title at the Land Registry.

My spouse owns a property in their sole name. How can a matrimonial home rights notice help me?

A Matrimonial Home Rights Notice (Land Registry Form HR1) is submitted to confirm that a spouse has a right to occupy a property. Once registered, this will be reflected on the property title.

The Home Rights Notice will not place you as a legal owner to the property, but it can protect your potential interest if your ex-spouse tries to make changes to the property title (such as selling or transferring without your knowledge), the Home Rights Notice will be evident on the property title and you will be notified about this.

The Matrimonial Home Rights Notice applies to one property per marriage and would be removed when the Final Order is made in the divorce process (previously known as Decree Absolute), so it is important that financial matters are dealt with by a Financial Order before the conclusion of the divorce to protect your interest.

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