

# A GUIDE TO LIVING TOGETHER AND THE LAW



If you are not married to your partner or have not entered into a civil partnership, then renting or buying a property together and dividing up your property and assets following separation can be complicated. This information sheet sets out the basics of the law relating to your legal rights but the law can be extremely complicated. We cannot comprehensively cover each and every situation that may arise. Your individual circumstances will be unique to you and it is important that you also seek independent legal advice.

The information set out here applies to you if you are living with your partner whether you are in an opposite-sex or same-sex relationship.

## Buying a home together

If you are not married or have not entered into a civil partnership and are considering buying a home together your decision about who should be the legal owner(s) of the property is a very important one.

## Names on the mortgage and names on the title deeds to the property

There is a difference between being named on the mortgage of a property and being named on the title deeds of the property (the legal documents that confirm who owns the property). A mortgage is a way of paying for a property. Being named on the mortgage means that you are responsible for paying it, it **does not** mean that you are an owner of the property. It is possible to pay a mortgage on a property and have no legal right to own, occupy or have money

from it when it is sold. To be an owner of a property you must be on the title deeds to it.

## Buying in joint names

If the title deeds are in your joint names you are both the legal owners of the property. You both have the legal right to live in the property and a financial interest in any profit you make from the property. However, owning the property in joint names does not automatically mean that you own the property equally.

When you are buying your property talk to your conveyancing solicitor about whether you want to hold the property as **joint tenants** or **tenants in common**.

As **joint tenants** you both own all of the property. A consequence of this is that if you died the property would automatically go to

the other joint tenant without forming part of your estate (your money and property). For this reason, if you separate you might want to ensure that you can leave your share in the property to someone else in the event of your death by “severing” the joint tenancy.

As **tenants in common** you can specify what shares you will each have in the property - either an equal (50% / 50%) share or an unequal (70% / 30%) share. This may be important if one of you is making a bigger or smaller financial contribution to the property. As a tenant in common you can leave your share to someone else in the event of your death. It will not automatically become your partner's.

### Buying in my sole name

If the property is registered in your **sole name** then you are the legal owner of the property and have a legal right to occupy it. If your partner lives with you at the property she or he will not strictly have any legal rights in relation to it. Therefore if your relationship ends you can ask your partner to leave. In certain circumstances she or he may be able to apply for an occupation order under the **Family Law Act 1996 (FLA)** (please see our **Guide to Domestic Violence and the Law**). Your partner may be able to argue that she or he has a “**beneficial interest**” in the property. This means she or he may be entitled to some money from the property (see below).

### Property in my partner's sole name

If the property is registered in your **partner's sole name** you are not the legal owner of the property and do not strictly have any legal rights in relation to it. If you separate from your partner she or he can ask you to leave and can lawfully change the

locks to the property. In certain circumstances you may be able to apply for an **occupation order** to enable you to remain in the property for a period of time or you may be able to argue that you have a “**beneficial interest**”.

Looking at the title deeds of the property alone will not necessarily provide the answer to who is entitled to live at the property or benefit financially from it. There are two ways in which you may be able to establish a financial interest in a property registered in your partner's sole name.

(a) If you have made a **payment towards the purchase** of the property (either to the deposit or to mortgage payments) and can show that you would not have done this had you known that you would have no rights to that property, then you may be able to establish that you have a financial claim and may be able to get some money back when the property is sold, or come to an agreement in order to get your money out of the property earlier.

(b) If you entered into an **agreement, arrangement or understanding** that the property was to be shared and you relied on that agreement to your detriment the court may decide that you should be entitled to some financial benefit from the property. This agreement does not necessarily have to be written down although this does help (see Cohabitation Agreements below) and can include contributions that you have made to home improvements or looking after the family. The court will decide how much money you should get and can order that the property be sold immediately.

To make your claim you will need to apply to the County Court under section 14 of the

**Trusts of Land and Appointment of Trustees Act 1996 (TOLATA).** This is a complicated civil law procedure and you should seek expert legal advice. You can register your potential interest in the property by registering a **caution** on the legal title of the property by contacting the Land Registry.

### **Can my partner claim a financial interest in my property?**

If the property is in your sole name your partner may be able to make an application under the TOLATA. If she or he is able to establish a financial interest in it the court can order that the property be sold immediately in order to pay your partner her or his share. But it can also refuse to make such an order. Generally it will refuse to make an order if satisfied that the home was bought as a home for the family. It is likely that any application for the sale of the home prior to any children reaching 16 or 18 will be refused, despite the fact that the relationship of the adults has broken down. Your occupation of your home may therefore be protected to a limited extent.

### **Cohabitation Agreements**

Entering into a written agreement with your partner when you buy property together is **not strictly legally binding** but can be a very useful indication of your intentions about the property if you separate. Your solicitor can prepare a **“deed of trust”** when you are buying the property which sets out your intentions and specifies what shares you will each have in the property. When you are buying property together you should also **consider making wills** which specify who you wish to inherit your property in the event of your deaths.

### **Renting a home together**

As with buying a property together, there are important legal implications when deciding to rent a property with your partner.

### **Renting in joint names**

If you rent a property with your partner in joint names you are both the legal tenants. You are therefore both entitled to live at the property and also both obliged to pay the rent and ensure that you do not break the conditions of your tenancy agreement. If you separate, you both remain entitled to live at the property until either the court orders that one of you leaves by making an occupation order or that the tenancy is transferred into one of your sole names or if one of you brings the tenancy to an end by serving a notice to quit. You can apply to the County Court for an occupation order or transfer of tenancy order under the FLA. It is important to remember that either you or your partner can serve a notice to quit at any time and therefore to protect your rights you should seek urgent advice about this if you do separate.

If you separate and you leave the property, whilst the tenancy remains in your joint names you remain liable for the rent. The landlord can insist that you pay the whole or part of the rent (this is called being **“jointly and severally”** liable). You could also be held responsible if your partner disobeys any of the conditions of the tenancy.

### **Renting in my sole name**

If the tenancy is in your sole name you are the legal tenant of the property. If your partner's name is not on the tenancy agreement she or he has no legal right to live at the property and if you separate you can ask her or him to leave. Some landlords,

particularly Local Authorities, require tenants to inform them of the names of all the people living at the property. Even though your partner's name may be written down for these purposes she or he does not have any legal rights in the property. In certain circumstances you may be able to apply for an order under the FLA forbidding them from returning to the property.

In certain circumstances and depending upon your relationship your partner may be entitled to succeed your tenancy (become the legal tenant) after your death.

### Renting in my partner's sole name

If you are living with your partner in a property rented in her or his sole name you are not the legal tenant and do not have the legal right to live at the property. Therefore if you separate your partner can ask you to leave. In certain circumstances you may be able to apply for an occupation order to remain there for a period of time.

If your partner dies and you satisfy certain criteria you may be entitled to succeed your partner's tenancy. This is a complicated area of law and you should seek legal advice.

### Homelessness

If you have been excluded from your home by your partner you should seek urgent legal advice.

Depending on your legal rights in the property and your relationship with your partner there are steps that you can take to ensure you and any children living with you can return home, such as applying for an occupation order. An occupation order can also exclude your violent partner from the home and order her or him to continue paying the rent or mortgage, see our **Guide to Domestic Violence and the Law**.

If you are forced to flee your home because of domestic violence you can approach your Local Authority's Homeless Persons Unit or Housing Office for help. Under the **Housing Act 1996** and the **Homelessness Act 2002** if you flee your home permanently or temporarily because of domestic violence your local authority has a duty to provide you with temporary accommodation whilst they decide whether you are in priority need for further housing assistance. You will be considered to be in priority need if you are vulnerable because domestic violence has occurred.

You may be able to get temporary accommodation for you and your children in a refuge while you decide what to do next. Contact the National Domestic Violence helpline (see below) for information about refuges and other support services.

### Welfare benefits and living together

If you decide to live with your partner, whether you are in an opposite-sex or same-sex relationship if one or both of you is claiming any of the following benefits as a single person, you will need to reapply as a couple:

- Income Support
- Income Based Jobseeker's Allowance
- Pension Credit
- Housing or Council Tax Benefit
- Tax Credits

When you reapply for these benefits as a couple the income and savings of both you and your partner will be taken into account when working out whether you are eligible for benefit and how much you are eligible for. This means that you may no longer be entitled to benefits that you are currently receiving or that the amount you receive goes down.

## Inheritance and living together

If you are not married or in a civil partnership and your partner dies without leaving a will (known as dying intestate) you will not be recognised by the law as one of the people to whom your partner's estate (her or his money and property) will be distributed. For example, if your partner dies without leaving a will and you lived with her or him in a property owned in her or his sole name the law says that the property will be inherited by his or her wife or civil partner if they had not been through divorce or dissolution, by her or his children if they have any and then by other relatives such as parents, grandparents or aunts and uncles.

It is possible in some circumstances to apply to the court for some money from your partner's estate. If you have been living together you may be able to apply to the court under the **Inheritance (Provision for Family and Dependants) Act 1975**. The court will consider how long you lived together, your contributions to the relationship, how dependant you were on your partner and your needs and resources such as income and property.

If you can it is best to avoid this situation by both of you writing a will setting out who you wish to inherit your estate if you die. You can also use your will to appoint a Guardian for any children you have.

Couples who live together are not exempt from paying **inheritance tax** like spouses and civil partners. This means that if you inherit money or property from your partner you will have to pay inheritance tax (currently 40%) on anything you inherit above £285,000 (this figure is correct for

2006/2007 but is due to increase to £300,000 in 2007 and £312,000 in 2008). However, if you own your home with your partner as joint tenants (see above) and on your partner's death the property passes to you, this does not form part of her or his estate and you do not pay inheritance tax.

## Next of kin

There is no legal definition of the term "next of kin" and therefore nothing set out in law about who should be treated as your next of kin in the event of you becoming unable to make decisions for yourself. Sometimes, this can cause problems for couples who live together as hospitals often treat spouses or close biological family members as next of kin.

If you are admitted to hospital you should tell them who you wish to be considered your next of kin. It is also important that your next of kin knows your wishes, particularly in relation to the care you wish to receive in hospital, any issues such as religion or dietary requirements and your wishes about organ donation in the event of your death.

If your partner dies, as next of kin you should be consulted on issues such as post mortem and funeral arrangements.

**The law relating to all these issues is complex. We have provided only a very basic overview of terminology, law, court practice and procedure. We would strongly advise you to seek legal advice by either telephoning our legal advice line or a solicitor**

**For free confidential legal advice on family law including divorce and relationship breakdown, children and contact issues, domestic violence and lesbian parenting call the Rights of Women Advice Line on **020 7251 6577 (telephone) or 020 7490 2562 (textphone). Tuesday, Wednesday and Thursday 2pm – 4pm and 7pm – 9pm Friday 12 noon – 2pm****

**For free legal advice on sexual violence and the criminal law please call our Sexual Violence Advice Line on **020 7251 8887 (telephone) or 020 7490 2562 (textphone). Monday 11am – 1pm or Tuesday 10am – 12 noon****

### **Other useful telephone numbers**

Benefit Enquiry Line	0800 882200	
Community Legal Service Direct (for finding a family solicitor)	0845 345 4345	<a href="http://www.clsdirect.org.uk">www.clsdirect.org.uk</a>
Department of Work and Pensions		<a href="http://www.dwp.gov.uk">www.dwp.gov.uk</a>
Land Registry		<a href="http://www.landreg.gov.uk">www.landreg.gov.uk</a>
London Lesbian and Gay Switchboard	020 7837 7324	<a href="http://www.llgs.org.uk">www.llgs.org.uk</a>
National Domestic Violence Helpline	0808 200 0247	<a href="http://www.womensaid.org.uk">www.womensaid.org.uk</a>
Resolution (for finding a family solicitor)	08457 585671	<a href="http://www.resolution.org.uk">www.resolution.org.uk</a>
Shelterline	0808 800 4444	<a href="http://www.shelter.org.uk">www.shelter.org.uk</a>
Tax Credits Helpline	0845 300 3900	

**Rights of Women, 52-54 Featherstone Street, London EC1Y 8RT**

**Office/Admin: 020 7251 6575/6 Textphone: 020 7490 2562**

**Fax: 020 7490 5377 Email: [info@row.org.uk](mailto:info@row.org.uk)**

**Website: [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)**

**Industrial and Provident Society No: 23221R**



**Please note that the law as set out in this information sheet is the law as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this information sheet. This information sheet is designed to give general information only.**