

A GUIDE TO LIVING TOGETHER AND THE LAW



If you are living with your partner or you are planning to live with your partner and you are not married or in a civil partnership, then it is really important to know your rights. This legal guide gives an overview of the law on cohabitation. However, your individual circumstances will be unique to you and it is important that you seek legal advice if you are affected by any of the issues discussed here.

The information in this legal guide applies 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 with your partner, 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 title deeds are the legal documents that confirm who owns the property. A mortgage is a loan to finance 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 have to be on the title deeds to it. Normally, if you are on the mortgage, you are also on the title deeds, but it is important to check this.

Owning a property 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**. If you are purchasing a property with your partner your conveyancing solicitor will have to complete a **TR1 Form** (available from the Land Registry) and on this form you can identify whether you own the property as joint tenants, tenants in common in equal shares, or tenants in common owning different shares.

As **joint tenants** you both own all of the property. If you own the property as joint tenants and 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. If you sever the joint tenancy you will each own 50% of the property.

As **tenants in common** you can specify what shares you will each have in the property – either an equal share (e.g. 50% / 50%) or an unequal share (e.g. 70% / 30%). 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 make a will and leave your share to someone else in the event of your death and it will not automatically become your partner’s.

Owning a property in your 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 automatically 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. For more information see our **Guide to Domestic Violence Injunctions**. 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 automatically 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. If you have experienced domestic violence you may be able to secure an **occupation order** to enable you to remain in the property and to restrict your partner’s ability to occupy the property for a period of time. For more information see our **Guide to Domestic Violence Injunctions**. In certain circumstances, you may be able to argue that you have a “**beneficial interest**” in your partner’s property and that you are entitled to some money from the property.

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 three 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 (including contributions to the deposit or to mortgage payments) you are entitled to a share of the property proportionate to the amount of money you contributed, unless evidence is produced to show that there was never any intention that you would have a share in the property.

(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. The court will decide how much money you should get and can order that the property be sold immediately. The agreement could be by way of a written agreement (see Cohabitation Agreements below); through discussions that you have had with your partner showing that you had an agreement to own the property jointly; or it could be proved through conduct, for example, by you contributing directly to the purchase price, the deposit or the mortgage payments. Indirect contributions, including things like home improvements or looking after the family, will be taken into account where there have been express discussions, an agreement, or, a common understanding that you were to have a share in the property.

(c) If you have been led to believe that you owned or part owned the property or you were led to believe that you would own the property in the future and you relied on this agreement to your detriment, for example, by paying money towards the mortgage or paying for renovations to the house, and your partner has denied that you have any rights.

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. Alternatively you can attend mediation and try and reach an agreement with your partner about what shares you each have in the property. Mediation is not appropriate if you have experienced domestic violence. You can register your potential interest in the property by registering a **notice** 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 an order for sale. Generally the court will refuse to make an order for sale if satisfied that the home was bought as the family home. 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. The court will consider any other financial provisions that you or your ex-partner may have.

Cohabitation Agreements

If you are living with your partner and you are not married or in a civil partnership, you might want to consider entering into a Cohabitation Agreement, which is a contract between you and your partner dealing with how your property is owned, including your home, the contents of your home, cars and also who is liable to pay debts. The contract is **not strictly legally binding** but can be a very useful indication of your intentions about your property if you separate.

Your solicitor should prepare a **“deed of trust”** when you are buying your home 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. For more information see our **Guide to Domestic Violence Injunctions and Domestic Violence, Housing and Homelessness**. 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 your 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 a non-molestation or occupation order forbidding them from returning to the property. For more information see our **Guide to Domestic Violence Injunctions**.

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 your 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. If you have experienced domestic violence you may be able to apply for an occupation order to remain at the property for a period of time. For more information see our **Guide to Domestic Violence Injunctions**.

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.

Children

If you have children and they live with you, you will be entitled to claim child maintenance from the other parent, following the breakdown of your relationship, regardless of whether you were married. You may also be able to make a claim for financial provision under **Schedule 1** of the **Children Act 1989**. For more information see our **Guide to Child Support**.

Homelessness

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

Depending on your legal rights to the property and your relationship with your partner there are steps that you can take to ensure that 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, Housing and Homelessness**.

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, you will need to reapply as a couple if one or both of you has been claiming any of the following benefits as a single person:

- Income Support
- Income Based Jobseeker's Allowance

- Employment and Incapacity 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 may be taken into account when working out whether you are eligible for benefits 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.

Some pension schemes will award pensions to unmarried partners on death. You should ask your solicitor about this or make enquiries with the pension provider.

Couples who live together are not exempt from paying **inheritance tax** on each others estates like spouses and civil partners. This means that if you inherit money or property from your partner you will have to pay inheritance tax of 40% on any money or assets you inherit above £325,000 (this figure is correct for 2010/2011.)

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 religious or dietary requirements and your wishes about organ donation in the event of your death.

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.

Please note that the law as set out in this legal guide 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 legal guide. This legal guide is designed to give general information only.

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For free, confidential, legal advice on family law including domestic violence, divorce and relationship breakdown and issues relating to children call 020 7251 6577 (telephone) or 020 7490 2562 (textphone). The advice line is open on Tuesday, Wednesday and Thursday 2pm–4pm and 7pm–9pm and Friday 12noon–2pm.

For free, confidential, legal advice on sexual violence, criminal, immigration and asylum law call 020 7251 8887 (telephone) or 020 7490 2562 (textphone). The advice line is open on Mondays 11am–1pm and Tuesdays 10am–12 noon.

Useful contacts

Child Support Agency	08457 133 133	www.csa.gov.uk
Collaborative Family Law Group		www.collablaw.org.uk
Community Legal Service (for finding a solicitor)	0845 345 4345	www.communitylegaladvice.org.uk
Department of Work and Pensions Benefit Enquiry Line	0800 882 200	www.dwp.gov.uk
Her Majesty's Court Service		www.hmcourts-service.gov.uk
Land Registry		www.landreg.gov.uk
National Domestic Violence Helpline	0808 2000 247	www.womensaid.org.uk www.nationaldomesticviolencehelpline.org.uk
National Family Mediation	0300 4000 636	www.nfm.org.uk
Gingerbread	0800 802 0925	www.oneparentfamilies.org.uk
Relate	0845 130 40 16	www.relate.org.uk
Resolution (for finding a family solicitor)	01689 820 272	www.resolution.org.uk
Samaritans	08457 909090	www.samaritans.org.uk
Stonewall	08000 502020	www.stonewall.org.uk

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