

FAQs: Living with your partner

What is the legal position if my partner and I live in a property that one of us owns?

If one of you owns a property that you are both living in, a cohabitation agreement will outline your rights to the property and make it much easier to understand exactly what you're entitled to in the event of a break-up. It will mostly cover how you will share the rent/mortgage and bills between you and how bank accounts, money, property and assets are divided if you should separate.

Without a cohabitation agreement, if you own the property, your partner may be able to claim 'beneficial interest' in your property and, if successful, your partner may then have the right to:

- live in the property;
- a share of the income if the property is rented out; and
- a share of the profit of the sale if the property is sold.

Does a cohabitation agreement overwrite tenants in common?

As tenants in common, you each own a specific share of the property. This will usually be 50/50. However, you can specify how much of the property each of you owns, such as 75/25. On death, the share of the property owned by the deceased does not go to the other property owner or owners, it goes to whoever it was left to according to the will.

However, you can also make it absolutely clear in your cohabitation agreement who owns what. It will also cover who is responsible for what, including bills, living expenses and maintenance, and who owns the furniture.

What is the difference between a cohabitation agreement and a declaration of trust?

A declaration of trust records the way in which the proportions of a property are held and sets out how any proceeds of sale would be divided if the property is sold in the future. It will take into account your initial contributions to the property, who will pay the mortgage and who an increase in value will be attributable to after making home improvements (a new kitchen, windows, a loft conversion or building an extension) or DIY.

Cohabitation agreements are more comprehensive and dictate what happens to the property if the relationship breaks down. However, it also deals with day-to-day matters such as the responsibility for household outgoings and how costs of repairs or improvements will be dealt with.

Our highly experienced family lawyers are experts in this field and have helped many couples setting up home, or already living together, draw up agreements that are tailored to their own individual needs. Please do contact us for further advice and information.

Do cohabiting couples have the same rights as married people or those in a civil partnership?

As the law in the UK currently stands, the only way to achieve the legal rights of a married couple is to get married or enter into a civil partnership. This is not changed even if you have lived together for a long period of time, have children or have bought a house together. Without marriage or a civil partnership, you have no claim for maintenance for yourself (you do for children), no claim against any assets in the other party's sole name and no entitlement to property.

If you cohabit rather than get married or enter into a civil partnership, and do not have a cohabitation agreement, you have:

- no automatic rights to your partner's property in the event of their death;
- no automatic entitlement to inherit their estate, even if you have children together; and
- no tax reliefs or exemptions that spouses and civil partners enjoy, including pensions.

You can change this by seeking a cohabitation agreement. This is a legal document which is enforceable by the court provided it is properly executed, you have both been honest about your finances, and have each obtained separate legal advice upon its terms. In order for your cohabitation agreement to be valid, the following conditions must apply:

- You should both enter into the agreement freely and voluntarily;
- The agreement should be set out in the form of a deed;
- Each of you must sign the document; and
- You must keep the agreement up to date with any major life changes.

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