

COHABITATION

If you are living with someone without being married you might think you have similar rights to married couples if the relationship breaks down or one of you dies. You would be wrong. There is no such thing as a common law marriage and cohabitants have very few rights that arise out of the relationship. You can't for example, claim maintenance from a cohabitant or former cohabitant for your own benefit.

If you live in a property in your partner's sole name

You have no automatic right to a share. You would have to establish a right by showing that:

- You contributed to the purchase of the property, in which case the court would divide up the proceeds in the proportion in which you both contributed; or
- You and your partner agreed that you would have a share and you acted on that or you made direct financial contributions, in which case the court would divide up the proceeds in such a way as is fair taking account of your financial arrangements throughout your relationship; or
- Your partner promised that you would have a share and you acted on that, in which case the court might transfer the property, give you the right to stay there or award you a fair share of the proceeds

The strength of your case will depend on what evidence you have. But it can be very difficult, costly and time consuming to establish such a right.

If you live in a property that is held in joint names with your partner

Your position depends on whether you own it as "beneficial joint tenants" or "tenants in common".

- Sometimes the solicitor who dealt with your purchase will not have specified either of these. In these circumstances it will be presumed that you have equal shares unless you are able to establish something different based on the sort of principles described above. You should check
- If you own the property as "beneficial joint tenants" you own half each and nothing that either of you have done during your relationship affects this

- If you own the property as “tenants in common” then the size of your share should have been specified. You should check. If they have not been specified you will have to establish the size of your share based on similar principles as described above. Where the documents are clear that will stand unless you can show that there has been fraud or mistake
- You are not entitled to maintenance from your partner

If you and your partner have children together

- The father will only automatically have parental responsibility if he registered as the father on the birth certificate after 1 December 2003. Otherwise he needs the formal written agreement of the mother or an order from the court
- If you are the main carer for the children, you can make financial claims on behalf of the children under Schedule 1 Children Act 1989. You and the children may be able to stay in the house whilst they are dependent, regardless of who owns the property, or the court can make orders for lump sums to provide for housing or for other specific capital needs of the children. In deciding this the court would look at whether this would be in the best interests of the children. Generally you will have to re-pay capital once the children are 18 or have finished their education. You can also get child support through the Child Support Agency and in some cases through the court

If your partner dies and has not made a will

- You are not entitled to any part of their estate unless you own the property as “beneficial joint tenants” in which case it would pass to you
- Otherwise your partner’s estate will go to their next of kin. This could be a spouse if they have never divorced. If your partner has children, their spouse would get the first £125,000, personal possessions and income from half the rest. The remaining half would go to their children who would then get the other half when the spouse dies. If your partner is divorced or never been married, all property would then go to their children. You could be out on the street
- If you own a property with your partner as “beneficial tenants in common” your partners share will go to his next of kin as above. You might have to sell to buy them out
- If you are left with nothing you would have to make a claim against your partner’s estate on the basis that you lived together for two years prior to the date of death or that you were wholly or partly dependent on them. This can be difficult, costly and time consuming

This is why its really important to make a will.

Cohabitation contracts

You can enter into a cohabitation contract which is an enforceable agreement setting out what you would both want to happen in the event of your separation. These agreements are likely to be enforceable.

See www.advicenow.org.uk/livingtogether

The contents of this fact sheet are general principles and do not constitute legal advice. Every case is different and there is no substitute for individual legal advice.

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