



# Information on cohabitation

Many people mistakenly believe that simply living together can give you the same rights as marriage. They believe that “common-law marriage” is a recognised legal status. However, they are wrong. Cohabiting couples do not have any legal duty to support the other including after a separation. In addition, a cohabiting couple can separate without having to go through any formal process. However, for cohabiting couples splitting up can be more difficult because there is no single law dealing with financial and other issues.

Some couples may have thought about and even gone ahead with a formal living together or cohabitation agreement. However, cohabitation agreements will generally follow what you both agreed if the result is fair, you both received legal advice and provided full disclosure of your financial positions

## Cohabitees’ rights in relation to property

If you do not have a valid cohabitation agreement then a cohabitees’ rights to a property depends upon whether you rent or own your home.

## Renting your home

If the tenancy agreement is in one person’s name, only then will the other cohabitant be entitled to remain living at the property for as long as the Tenant gives them permission to do so.

Therefore, if your relationship comes to an end in circumstances where your partner is the legal Tenant and they wish you to leave, all they need to do legally is provide you with reasonable notice to leave.

In some circumstances, the non-tenant could apply to the Court for an Occupation Order but the Court can only make the Order in very limited circumstances, and only for a maximum period of six months.

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In practice there is nothing to stop the Tenant changing the locks to a property and putting your personal possessions out.

In addition, in certain circumstances the Family Law Act 1996 gives the Court power to transfer tenancies between couples with or without children but these are in limited circumstances.

If you have a Joint Tenancy Agreement then both Tenants have the right to live in the property and are responsible for paying the whole of the rent whether or not they are living in the property or not.

Again, the Court has the power to transfer tenancies in certain circumstances under the Family Law Act 1996 or if there are children from the relationship

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## Owning your property

The property in question may be solely or jointly owned.

- Sole Legal Owner

### Occupation

The non-owning party does not have an automatic right to live in the family home and can find themselves in a very difficult position. They are not legal owners and unless they are able to establish a financial interest in the property, their legal status is very limited. This means in reality that they only have the right to live in the property as long as the owning party lets them do so.

However, in certain circumstances the non-owning party can apply for an Occupation Order under the Family Law Act but that will only give temporary rights to live in the property and is granted in very limited circumstances.

The non-owning party can be legally evicted from the property if they leave voluntarily or with a Court Order.

### Ownership

There are a number of ways a non-owner may be able to make a claim to the beneficial interest in a disputed property:

These include proving one of the following:-

- Resulting trusts – where the non-owner makes a direct financial contribution to the purchase of the property and is entitled to share the equity in proportion to their contribution.
- Constructive trusts – where there has been a common intention between the parties to share the beneficial interest in the property and the non-owner has acted to their detriment as a result e.g. spent money on the property.

Proprietary Estoppel – Where neither of the two above trusts arise but the court decides as a result of certain circumstances it would be unfair not to award the non-owner a share of the beneficial interest. This arises for example if the non-owner mistakenly thought they had a right in the property and they acted to their detriment as a result.

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If a non-owner can establish a beneficial interest then that interest is usually quantified by looking at the whole course of dealings between the parties.

This is a complex area of law and we may need to obtain further information and documents before being able to advise you fully.

- Joint Legal Owners

### Occupation

Property law entitles both joint legal owners to live in the property unless there is a Court Order preventing one of the joint owners from living there. Either party could make an Application in certain circumstances for an Occupation Order to stop the other from living there.

### Ownership

There may be circumstances where there is doubt on the face of the title deeds of the property as to what each party's beneficial interest is. This situation is less likely to apply with more recently bought properties given the standard Transfer Deed that has to be completed on sale. However, there may still be cases where it is not clear from the title deeds as to what percentage share each party has in the property.

Beneficial interests in properties can be owned in two ways:

1. Joint tenants – this means that both are equally entitled to the whole of the value of the property. In these circumstances if one co-owner dies the other automatically becomes the owner of the whole property.
2. Tenants in common – this means that the owners hold distinct and separate shares in the value of the property. In this case, if one co-owner dies their share in the property would fall into their estate and if they had made a Will, this would say how their share would be divided.

When a relationship breaks down, one party may wish to prevent the other from inheriting their share if they were to die before property matters were sorted out.

It is, therefore, possible for Joint Tenants to change the way they own the property by “severing the joint tenancy” so the parties hold the property as Tenants in Common. However, it is important in such circumstances that a Will is made by both parties to govern where their share should go.

There is a presumption where property is jointly owned that equity will follow the law so the beneficial interest will be owned as joint tenants unless the facts are very unusual.

### Application to Court

Where a relationship comes to an end, there may be no agreement between a couple about whether or not the house should be sold or there may be a dispute as to what the parties respective shares of the property are.

Either party could make an Application to the Court under the Trusts of Land and Appointment of Trustees Act 1996 for:

- An Order for Sale
- Postponement of a sale
- A Declaration as to what their financial interest in the property actually is.

When considering whether or not to make an Order, the Court have to consider the following:

1. The intentions of the joint owners when they bought the property.
2. The purpose for which the property was held, i.e. business premises or a family home.
3. The welfare of any child under 18 who lives in the property or might reasonably be expected to live in the property as their home.
4. The interests of any secured creditor, e.g. mortgage company or loan company.

### Children Act Financial Claims

Where unmarried couples have children, the Court can Order the transfer of property (including some tenancies) from one parent to another or to the guardian of a child or someone who has a Child Arrangements Order that states the child lives with them provided the transfer is intended to benefit the child.

The Court have to take into account certain factors when deciding what Order to make. These are as follows:

- Income, earning capacity, property and other financial resources of both parties now and in the foreseeable future.
- Financial needs, obligations and responsibilities of both parties now and in the foreseeable future.
- Income, earning capacity (if any), property and financial resources of the child.
- Any physical or mental disability of the child
- The manner in which the child was being or was expected to be educated or trained.

The Courts specifically are not to take into account matters that related to the relationship between the parents such as bad behaviour, their respective age or the length of the relationship. This is because the purpose of any transfer is intended to only benefit the children not the parents.

The Court has wide powers in relation to property. The Court can Order an outright transfer of property to a parent although this is not widely used.

More commonly property such as the family home may be allowed to be retained by one parent with whom the children live with until the children are 18, after which the property would then be sold and the proceeds would be paid back to the owner of the property.

Alternatively, the property could then become that of the child.

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## Other Issues

### *Debts*

Legally if the debt is in your sole name then you have the legal responsibility to pay it even if you were not responsible for running the debt up in the first place.

Whilst it may be fair that the other party should contribute to the debts you cannot force them to do so.

If you have a private agreement that one of you pays off a debt in your joint names this does not change the legal responsibility for payment of the debt. If it is a joint loan then you both remain jointly and severally liable for the debt.

### *Joint bank accounts*

If you have a joint bank account then you will need to deal with the account otherwise the other person could run up an overdraft or could empty the account.

Any credit balances should be shared equally, or in accordance with the contributions to that credit balance.

It is important that any steps are discussed with your bank to ensure that accounts are properly closed or transferred.

### *Personal Possessions*

Your partner does not have an automatic legal claim to your own belongings, and you do not have an automatic legal claim against their personal belongings.

If you do own items jointly then you will need to decide whether to buy out your partner's share, sell them your share or sell the item and split the proceeds. If you cannot agree how the personal items should be dealt with then you will need to rely on the trust doctrines detailed above. Generally, personal items owned before the relationship will remain with the person who owned them and gifted items will remain with the recipient.

At Chafes Hague Lambert, we have an experienced family team that are here to discuss your situation, please contact us on:

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