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Co-habitation

Many people believe that couples living together can become 'common law spouses'. This is not the case and on separation there is no obligation to support each other financially. The court's powers are very limited in considering financial circumstances of co-habiting couples. Partners who live together either in a property they own or rent are known as cohabitants and the property is known as the cohabitational home. When partners buy a home together, your names will appear on the title deeds.

Cohabitants can own the property jointly in one of two ways.

- **Joint tenants**

If the property is purchased as joint tenants and subsequently sold, both are entitled to 50% of the equity. If either party dies, the survivor automatically gets to keep the whole equity in the property.

The only exception to this is if the tenancy has been severed. This is done by one party giving the other written notice. The property is then owned as tenants in common which is explained below.



- **Tenants in common**

This means the cohabitants own the property in separate shares. The shares can be equal or expressed in different amounts (e.g 80% to 20%). A tenant in common can deal separately with their share. You can leave it by Will to anyone of your choosing. This option is often chosen where one party contributes more towards the purchase price or wants to leave their share to a specific person such as a child.

Severing the tenancy

Separating cohabitants therefore need to consider whether to sever the tenancy and should also make a Will. There are risks and implications of severing the tenancy, particularly where one of you is seeking more than a 50% share of the property and legal advice should be taken before severing the tenancy.

Ownership of property

If the title deeds clearly set out how the property is owned and your respective shares, the starting point on any separation would be a division in accordance with the title deeds. However, both can apply to the court for the property to be sold and a declaration as to beneficial ownership. In some circumstances the court can determine that the original beneficial ownership has changed due to your course of dealings during the relationship.

On separation you can consider a transfer of the property to the other party, subject to a release from the mortgage and payment of an appropriate lump sum. Where there are children living in the property, the court can consider deferring a sale but this is not done automatically. Each case will be dealt with on its own facts.

If only one cohabitee owns the property the other may still be able to claim that they ought to have a share of the equity. The non-owning cohabitee must be able to prove with evidence that it was agreed between you that it was intended that you would both have a share of the equity. In reliance on that the non-owning cohabitee needs to show they have made a financial contribution to the property and have acted to their detriment. The non-owning party could also seek to rely on a promise made by you as to their interest in the property upon which they have relied to their detriment. An engaged non-owner of property may also have a cause of action.

The non-owning cohabitee could make an application to the court for a sale of the property and a share of the equity. The court will have to determine the extent of any share and this will depend on the available evidence. It is therefore very important to formally record evidence of intention in respect of the property wherever possible.

It is not always clear how a property is owned when co-habitees separate. Steps should be taken to reduce the potential for conflict at the outset.

1. A Living Together Agreement

This will set out both parties' intentions in respect of the property. It will also deal with other issues such as contents, bank accounts, vehicles and debts. It can also make provision for child support. It will assist in achieving a smooth financial separation and could avoid court proceedings.

2. Declaration of Trust

Carefully consider how the property is to be owned, particularly where contributing unequal amounts to the purchase price. You can enter into a declaration of trust whether the property is owned in joint names or your sole name, in order to clarify beneficial ownership.

3. Make a Will

This will deal with your share of the property on death and also documents your intentions. A cohabitee may not necessarily be able to make claims on their deceased partner's estate unless named in the Will.

4. Separation Agreement

In order to formally record any final agreement on separation, consider entering into a separation agreement. This may avoid further claims being made in the future, particularly where one party receives less than a 50% interest in the property. It could record an agreement for a transfer of the property or a sale at some point in the future, where there are children for example.

Taylor Bracewell Solicitors is a dynamic and forward thinking legal firm with offices in Doncaster and Sheffield. We are passionate about providing individual service and connecting with our clients on a one to one basis. This enables us to fully understand our clients' legal needs and deliver exceptional value in all our services.

If you would like more information about family or would like to arrange an appointment to discuss matters further please contact us on 01302 341414 or 0114 272 1884.



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