

Family Law

Cohabitation Agreements



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It would be wise to enter into a cohabitation agreement if you are buying a property with a partner as such agreements can often resolve the significant issues which can arise if the relationship breaks down.

Currently there is no English legislation which deals specifically with the issues which can arise on the breakdown of such a relationship and so land law and inheritance law have to be deferred to along with the Children Act if there are children involved.

There is no such thing as a 'common law' wife or husband and so a cohabitee can be in a position where they have no rights unless there has been documenting of what is intended at the start of the relationship.

Whilst this can be done in relation to property using a Deed of Trust, in relation to other matters the best form of protection is a cohabitation agreement. This agreement which is in essence a contract between the parties can also deal with property ownership and the respective rights of each party but can also more widely deal with the day to day financial running of the relationship, who is responsible for what and how all assets including cars, bank accounts, savings and furniture would be split on a relationship breakdown. The agreement can also cover the arrangements for care of the children and also the financial support of the children.

Joint ownership of property

When you are buying a property together, you will each be a co-owner, and as co-owners, you can hold the property in one of two ways:

- As Joint Tenants.
- As Tenants in Common.

Joint Tenants

If you hold the property as Joint Tenants, both of you will own the whole of the property. You will not each have a quantified share in the property and will not be able to leave a share of the property in your will.

If you sell the property, or if you separate, it will be presumed that you both own the property equally, regardless of your respective contributions to the purchase price. On the death of one co-owner, their interest in the property would automatically pass to the remaining co-owner without any further action.

The surviving co-owner would then own all of the property and on their death it would form part of their estate. This is known as the 'right of survivorship'.

Married couples or those in a civil partnership commonly use this method of co-ownership because the right of survivorship makes it straightforward to inherit each other's shares in the property.

There may however, be reasons not to become Joint Tenants. For example, if one of you has made a larger contribution to the purchase price of the property and you want this to be recognised if the property is sold or if you separate.

A joint tenancy is often not suitable if you have a family from an earlier marriage and wish to leave your interest in the property to them, instead of passing it to the other co-owner.

Tenants in Common

If you hold the property as Tenants in Common, each of you will own a specified share in the property. Your shares may be equal, but they do not have to be.

Your share of the property can be passed on to another person, either during your lifetime or under your will. If you do not have a will at the time of your death then your share will pass in accordance with the rules of intestacy, and not therefore necessarily to the co-owner/owners which might not be what you would wish. You should seriously consider the preparation of an appropriate Will and this is something with which we can assist.

If you wish to hold the property as Tenants in Common, then you should sign a Declaration of Trust. This is a document that formally records that you hold the property as Tenants in Common and sets out your

respective shares in the property. If you sell the property, or if you separate, the Declaration of Trust will be looked at, to work out your entitlement to the sale proceeds from the property.

Holding the property as Tenants in Common may be more appropriate if you have children from previous relationships and would prefer them to inherit your interest on your death rather than your co-owner. Holding the property as Tenants in Common in unequal shares may be desirable if you have made unequal contributions to the purchase price of the property.

Next steps

How you wish to hold a property must be your own decision and is something that you should keep under review following the purchase of your property. If you decide to hold the property as Joint Tenants but then wish to split your interests, the Joint Tenancy can be 'severed' and turned into a Tenancy in Common at any time.

It is important to specify now how you wish to hold the property, to avoid any uncertainty in the future.

If you have any queries regarding the ownership of the property please do not hesitate to contact us.

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