

# Cohabitation breakdown

Cohabiting couples do not currently have the same legal rights as those who are married or in a civil partnership. When a couple are married or in a civil partnership and the relationship ends, matrimonial and civil partnership legislation allows the courts to deal with the financial arrangements in relation to the family assets including property and maintenance. Where an unmarried couple are living together and the relationship ends, there is no such legal provision. The applicable legal principles are mainly found in trust and property law.

## Ownership of the home

A cohabiting couple should ensure that they fully understand the difference between owning a property together as Joint Tenants and Tenants in Common. If they own a property as Joint Tenants, then they both own the whole and either can apply to the court for an order of sale and the proceeds to be divided equally. In addition, on the death of one of the couple, the survivor will become the sole owner.

If the couple purchased a property as Tenants in Common, only a declaration of trust, setting out their respective shares in the property, will be decisive. If there is no such declaration as to ownership, it will be presumed that both parties have a beneficial interest in the property to the extent of their contribution. In addition, on the death of one of the couple, the survivor will not become the sole owner, as the deceased person's share will pass in accordance with his or her will or under the intestacy rules. The intestacy rules do not make provision for a cohabiting couple so it is essential that they make wills. In some limited circumstances, it is possible for the survivor to make a claim against the deceased spouse.

If only one of the couple is the sole legal owner of the property, the presumption is that he or she also owns all the beneficial interest in the property. In this situation, the other person will have to establish a claim in equity (resulting, constructive trust or proprietary estoppel).

## Occupation of the home

If a non legal owner does not have any beneficial interest in the property as discussed above, he or she will have no right to remain there and may be excluded by the owner at any time on giving reasonable notice. Having said that, there are several ways of protecting occupation rights for non legal owners.