

Setting up Home with your Partner: Legal considerations for cohabitees

Moving in with your partner is an exciting time. It's a big step for any couple, whether you're renting, buying a new home together or moving in to a home one of you already owns.

Though this is a time for celebration and enjoyment, we think it's important to be aware of the legal implications of your move. Cohabiting couples have far fewer legal protections than spouses or civil partners. This makes it more important to make sure you are legally prepared when setting up a home together. Without this advance preparation, any future separation could mean a legal disaster as well as a personal one. This help guide sets out some considerations and arrangements to keep in mind to protect your rights in the future.

Home ownership

Many cohabitees discuss who will own the house or property they are moving into. However, it's much less common for people to then make sure what they have agreed on is legally enforceable. Ownership of a property is determined, for the most part, by whose name appears on the property's title register. So, whether one partner is moving into a house which belongs to the other or you are both buying a new property together; if you intend to share ownership you should ensure both your names are on the property's title register.

If the relationship breaks down and your name is not on the property, it may be difficult to hold your partner to what was agreed upon. You will not have any clear legal rights in the property, meaning you may not be entitled to any sale proceeds if the house is sold, and you may have no right to continue living there if your partner asks you to leave.

However, there are some exceptions to this. You may have some rights in the property in situations where:

- You made contributions to the deposit or ongoing mortgage payments
- You made some other kind of financial commitment (such as paying for renovation work) because it was agreed you would own a share of the house

Unfortunately, establishing these rights when your name is not on the property can involve costly legal action.

Joint ownership

If you agree to joint ownership, it doesn't necessarily mean you both have to own the property equally. If you choose to own a property jointly as 'tenants in common', you can

agree to hold unequal shares.

The other way of owning joint property is to hold it as 'joint tenants'. Both 'joint tenants' and 'tenants in common' have their own legal implications so it is important to choose the option which is best suited to you as a couple. Our [help guide](#) on 'Jointly Owned Property' contains much more information on this.

Rented properties

If you and your partner choose to rent a home together, or move into a home one of you is already renting, it's important to be aware that only the cohabitee whose name is on the rental agreement will be legally responsible for paying the rent. The person whose name is on the rental agreement will also have more rights in terms of remaining in the property if the relationship ends. You may wish to make the situation fairer legally by making sure the names of both cohabitees are on the rental agreement.

Making Wills

Everyone over the age of 18 should have a Will. However, for unmarried cohabitees, this is particularly crucial. If you die without a Will, your estate will go to your nearest relatives in accordance with the [intestacy rules](#). Unlike spouses and civil partners, cohabitees cannot directly inherit from their deceased partner's estate under these rules, meaning your partner could receive nothing if you were to die without a Will.

It is possible for a cohabitee to make a legal claim for 'reasonable financial provision' from their partner's estate. This is done through the Inheritance (Provision for Family and Dependants) Act 1975 (IPFDA). However, cohabitees face additional challenges compared to other relatives who can make an IPFDA claim. For example, a cohabitee must have been living with their partner for at least two years to be able to claim. Our blog post on [cohabiting couples' rights under the IPFDA](#) explains this in more detail.

It's important to note that assets which you and your partner legally own together as 'joint tenants' (not 'tenants in common') will automatically pass on to the surviving partner. This might include your house and/or any joint bank accounts.

There are other assets which can automatically pass upon death, such as pensions. However, any state pension which you own will not automatically pass to an unmarried partner. The terms of company and private pensions may vary. It's important to check the terms for any pensions you own to understand what will happen to them upon your death.

Lasting Powers of Attorney

Cohabitees are not classed as 'next of kin' for medical purposes. This can mean you are not involved in decisions about your partner's welfare if they become seriously ill. One way in which you and your partner can prepare against this is to make [Lasting Powers of Attorney](#) to cover health and welfare decisions and appoint each other as your Attorneys.

You can also make a Lasting Power of Attorney to appoint people to make decisions about your property and financial affairs if you become unable to do this for yourself.

To find out more about Lasting Powers of Attorney, please read our separate [help guide](#).

Family law matters

Cohabitees might also have several family law-related issues to consider, especially when there are children involved in the relationship. These include considerations such as:

- The surname the children will take
- Parental responsibility for the children
- How child support, if any, should be arranged if you separate

In addition, you may wish to draw up a Cohabitation Agreement (also called a Cohabitation Contract) between you and your partner. This is a way of setting out your legal expectations and intentions as a couple and can set out what should happen if you separate.

Roche Legal does not handle family law matters. However, if you would like advice regarding these topics, we can refer you to several trusted family law practitioners who will be able to help you.

Tax treatment

Spouses and civil partners receive several tax benefits, such as exemptions for inheritance tax and capital gains tax when transferring assets between them. Unfortunately, cohabitees are not eligible for these benefits and this means you may want to seek advice on the tax implications of making any major gifts to each other which go beyond the personal yearly allowances for the different taxes.

How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

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