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Cohabiting couples - what happens when it all falls apart?

Contrary to popular belief, legally there is no such thing as a 'common law marriage'.

Couples who have chosen to live together, rather than marry, often do not realise that they have fewer rights when they separate than their married counterparts even where there are children.

On separation, cohabiting couples often have to seek a declaration under the Trusts of Land and Appointment of Trustees Act 1996 to determine what their share of the property is, and whether it can be sold. The order is based on each person's contributions to the purchase or their intentions, usually at the time that the property was purchased or it may be based upon how they hold the property.

If the cohabiting couple have children, an application can be made under the Children Act 1989 for the house to be sold only when the children have grown up or for a lump sum to buy an alternative property to live in with the children. Often this lump sum has to be given back when the children are adult. Furthermore, neither party has the right to claim maintenance from the other.

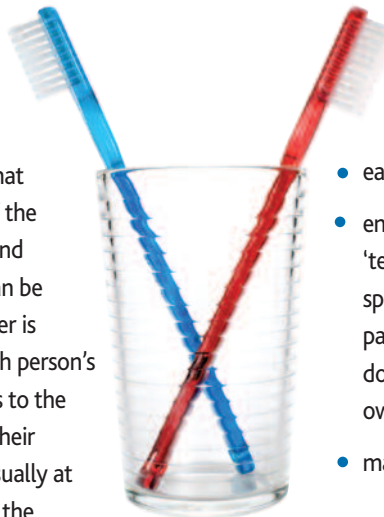
Couples should therefore:

- consider entering into a cohabitation contract at the outset, setting out how the property would be divided if they were to separate.
- each take their own legal advice.
- ensure that they own the property as 'tenants in common' so that each person has a specific share in the property which becomes part of the person's estate on their death and does not automatically transfer to the other owner of the property.
- make a will.

If separation is being considered, the couple's intentions in relation to the property are important if there is no written document.

There is no statutory protection for unmarried couples. The Government has come under some pressure to pass legislation to protect unmarried couples, but it has not yet done so, and at the moment, legislation does not appear likely.

If you are thinking of moving in with your partner, or if you live together and are thinking of separating then it is a good idea to take legal advice.



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Buying a shared ownership property

One way of getting onto the first rung of the property ladder is through shared ownership. This could involve buying a property with family members or friends or through one of the government-backed shared ownership schemes aimed at low income families.

Shared ownership housing schemes are usually intended for people who cannot afford to buy a suitable home in any other way or keyworkers such as teachers, nurses or police officers.

Applicants must usually be in housing need and be unable to afford outright purchase. Priority will often be given to people on local authority or housing association waiting lists.

There are different schemes available that offer a choice of purchasing a share to the value of 25%, 50% or 75% of your home. In addition to the mortgage, you would also pay a small amount of rent on the share in the property that you do not own. Clearly, the more that you can afford to pay towards the mortgage, the less rent you will have to pay and the more equity you will own.



If your financial circumstances improve and you wish to purchase further shares in the property this can be done if the scheme allows 100% ownership. It is often known as 'staircasing'.

Shared ownership and 'Homebuy' schemes are managed locally by housing association 'agents' and www.shared-ownership.org.uk provides a comprehensive listing of housing associations that offer shared ownership housing according to your local authority or county.

The shared ownership lease between you and the housing association will set out your rights and responsibilities as a shared owner. Although you have not bought the property outright, you will have the normal rights and responsibilities of a full owner-occupier. In particular, you will normally be fully responsible for the cost of repair and maintenance to your home unless it is a flat where certain common parts may be the responsibility of the flat owners collectively through payments known as service charges.

Purchasing a property with a family member, friend or partner needs careful planning too and it is important to have a discussion and agreement about each person's financial commitments. Make sure this is documented by your solicitor so that you are clear about how much of the property each person owns, how you will split maintenance costs and running costs. You also need to agree what you would do if one person is unable to make their mortgage payment or one or both of you wish to sell the property.

Not all lenders will lend on the basis of shared ownership so you may need to speak with an independent financial adviser regarding your individual requirements.

For further information on purchasing a property through shared ownership please contact Khalid Mahmood or Jenny Bowyer.

The role of the executor

You have been asked to be someone's executor, what does this mean?

When someone dies, the executor's job is to deal with the administration of that person's estate, including ensuring that the terms of the will are carried out.

The first tasks are to register the person's death and to arrange the funeral, although there may be members of the family who will deal with this.

The executor has a legal duty to safeguard the assets of the estate for the benefit of the beneficiaries of the will. This will include ensuring the person's house is secure and adequately insured during the administration period.

You will need to collate information on all the assets and liabilities of the person's estate, which will involve writing to the various banks, building societies, credit card companies, share registrars etc and obtaining valuations of the investments as of the date of death. It will also be necessary to obtain a valuation of any property and the contents.

Depending on the value of the estate, you may then need to apply for a grant of probate in order to deal with these assets. This will involve submitting an account to HM Revenue & Customs, arranging payment of any inheritance tax and swearing an oath which will form the application to the Probate Registry.

Once you have obtained the grant of probate, this document will allow you to cash in or transfer the assets, including any property. The proceeds of the assets will then be used to pay any debts of the estate and the balance will be divided amongst the beneficiaries of the estate, according to the will. You will need to provide residuary beneficiaries with detailed accounts of the estate.



An executor's job can last from a few months to a number of years depending on the complexity of the estate. It is an onerous and unpaid task, but you can delegate all the tasks including contacting the various financial institutions, preparing the paperwork for HM Revenue & Customs, the Probate Registry and the accounts for the beneficiaries, to a solicitor. The fees of such a solicitor are a legitimate expense of the estate.

If you require assistance in the administration of an estate, please contact our wills and probate team.

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Remortgages • Court of Protection • Making a Will • Probate



Putting your house on the market? Speak to us first

Traditionally anyone wishing to sell their property would speak to an estate agent initially. Since April 2009, you will need a home information pack (HIP) before you can start to market your house or apartment, so speak to us first.



We can prepare this for you and as our home information pack will be independent, you will not be bound to one estate agent with possible problems if you wish to change agents in the future.

Last year, an investigation by Channel 4 News claimed that up to £100 in commission was being added to the cost of home information packs by estate agents. One HIP provider told Channel 4 that estate agents were being paid anything from £50 plus M&S vouchers to £200.

Not only are our HIPs and conveyancing services competitively priced, you will receive a highly personal service from local professionals who know the local market and have your best interests at heart. We look forward to hearing from you.

Meet the Private Client Team

If we can help you regarding any of the matters raised in this newsletter please contact:



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