

Cohabitation

People who live together without being married often mistakenly think they have similar rights to married couples if the relationship breaks down or one of you dies. This is often not the case.

There is no such thing as a common law marriage and cohabitants have very few rights or financial claims that arise out of the breakdown of the relationship. Cohabitants cannot, for example, claim maintenance from a former cohabitant for their own benefit or usually seek a share of their former partner's general wealth and assets, though there might be circumstances which break this usual situation.

Property

If you live in a property in your partner's sole name, you have no automatic right to a share. You would have to establish a right (called a beneficial interest) in the property. These can be complicated to establish but some examples in which this might be possible could include the following scenarios:

- You contributed to the purchase of the property; or
- You and your former partner agreed that you would have a share and you acted to your detriment in reliance on that agreement; or
- You made direct financial contributions;
- Taking account of all of the financial arrangements throughout your relationship.

These are examples and are not intended to be exhaustive.

Determining whether you might be able to establish whether you have a beneficial interest in the property can be a time consuming and lengthy process of analysing a great deal of information, about what was said and done during your relationship. The strength of your case will depend on what evidence you have. They can be difficult cases.

If you live in a property that is held in joint names with your partner:

- The starting point is to be clear about whether you co-own the property as beneficial joint tenants or tenants in common.
- Usually, depending on when the purchase took place, the solicitor who dealt with your purchase will have specified one of these. It might be necessary to look at the solicitor's file or check your Land Registry title deeds which will specify your type of ownership.
- If it can be confirmed that you do co-own as joint tenants then the presumption will be that you have equal shares unless one of you can establish something different based on the sort of principles described above. Sometimes this presumption can be challenged, sometimes it cannot. It depends on the facts of each case.
- If you own the property as tenants in common then the size of your share might have been specified in a separate document, often called a Declaration of Trust or a Deed of Trust. You should check. If you have such a document then this might be determinative of your shares and interests.
- If it has not been specified, you will have to establish the size of your share based on various principles, including what was said, agreed and your financial contributions.

You can engage in mediation, the collaborative process or solicitor negotiations with a view to finding an agreed solution. If an agreement cannot be reached a court claim can be issued under the Trusts of Land and Appointment of Trustees Act 1996 for a decision about what you are entitled to.

Children

If you and your partner have children together, and you are the main carer for the children, you can make financial claims on behalf of the children under Schedule 1 of the Children Act 1989. A claim could be made

independently or in conjunction with a claim under the Trusts of Land and Appointment of Trustees Act 1996.

You and the children may be able to stay in the house whilst they are dependent or under the age of 18, regardless of who owns the property, or the court can make orders for lump sums to provide for housing or for other specific capital needs of the children. When making a decision the court will look at whether this would be in the best interests of the children. You might have to re-pay capital once the children are 18 or finished their education, though this very much depends on the circumstances.

Child support can be assessed and collected, if necessary, through the Child Support Agency or the Child Maintenance Service, and sometimes through a court.

Making a will

If you have not made a will then we recommend you do so. You might need to make a new will if you made a will whilst you were living with your partner.

Cohabitation contracts

You can enter into a cohabitation contract which is an agreement which can record various financial arrangements, both during your relationship and in the event of the relationship breaking down. Such agreements are not automatically binding or enforceable, but they can be helpful to record agreed intentions, and can therefore be of evidential use in the event of court proceedings, and increasingly the courts are attaching considerable weight to such agreements, though this is at the discretion of the court and depends on the facts of each case.

Separation agreements

If you have decided to separate it might be important to record the financial arrangements in one document for clarity and completeness, and therefore a separation agreement might be sensible.

We can discuss these options and your needs, and help you decide what is right for you.

The contents of this fact sheet are general principles and do not constitute legal advice. Every case is different.

Margate Hawley Street 01843 234010	Birchington Station Road 01843 842356	Broadstairs High Street 01843 868861	Canterbury Broad Street 01227 207000	Ramsgate Queen Street 01843 595990
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Email: family@boysandmaughan.co.uk
www.boysandmaughan.co.uk

