

Your guide to setting up home with your partner



The Law Society

Securing your future

Moving in with your partner or buying a house together can seem like an exciting prospect. But few couples realise how risky their situation can be from a legal point of view. It may seem outdated, but unmarried couples are not protected by law in the same way that married couples or civil partners are. Common law marriage does not exist. Sadly, by the time people realise this, it is often too late - the relationship breaks down or a partner dies and it is only then they realise they do not have any legal protection.

This leaflet sets out the things you need to consider if you are not married or in a civil partnership.

It is well worth taking legal advice as soon as you plan to live together to find out:

- what rights you do have;
- where you and your partner stand in all situations; and
- what you can do to make your position more secure.

Finding a solicitor

If you don't already have a solicitor, visit our website at www.lawsociety.org.uk/findasolicitor and search under 'Family' to get details of solicitors in your area. Or call 0870 606 2555.

What the solicitor will need to know

Once you have appointed a solicitor, they will need a thorough briefing on your circumstances. They are likely to ask you for a variety of information. This could include:

- details of the history of your relationship;
- a list of your assets and those of your partner;
- if you own your home, what its value is and whose name it is owned in;
- contributions you and your partner have made to the value of the home (including work on the property);
- the value of any other assets;
- your earnings and those of your partner; and
- whether you or your partner have any children.

Your solicitor will then explain your rights. They will highlight the circumstances where you or your share of the home could be at risk and will tell you what action to consider taking to avoid this.

Remember that your solicitor can only act for one partner at a time. They cannot act for both of you even if you both want this.

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Things to consider

Here are some of the main areas of law that your solicitor will cover with you.

Home ownership

If you move in with someone and the house is only in their name, usually you have no right to the proceeds from selling the house. This applies unless you can prove:

- you have contributed to the deposit for the house or the mortgage payments; or
- you have made a financial commitment (for example, paying for major work on the house) because it was agreed you would own a share of the house.

If the house is not in your name you may have no right to continue to live there if your partner asks you to leave. Also, if the house is not in both your names, you have no right to inherit the house if your partner dies unless they have put this in their will. If they do not leave a will, you may need to make a claim against your partner's estate through the court. You will only be able to do this if you have been living together for two years or more, or you were being supported financially by your partner.

Your solicitor might recommend that the house is transferred from your partner's name into your joint names, either as 'joint tenants' or 'tenants in common'. If you own as joint tenants with your partner, you are usually entitled to 50% of the money if you sell the property. And if one of you dies, the other automatically inherits the property, regardless of what is set out in your wills.

However, if you own as tenants in common, you have a right to your own share of the property but no more. By owning as tenants in common you can formally agree exactly what share of the property you each own by getting the solicitor to draw up a 'deed of trust'. This can prevent disagreements later. If either of you wants to leave your share of the property to the other when you die, this needs to be set out in a will.

Renting together

If you are renting together, it is a good idea to have the tenancy agreement in both your names.

Children

If you have children with your partner, you need to think about what the child's surname will be and how to register their birth. It is up to you and your partner what surname you choose for your child, and you can register the child's birth jointly.

Under the law, if you and your partner are not married, the mother of the child has automatic parental responsibility for the child. From 1 December 2003, if the father is jointly registered on the birth certificate, he also has parental responsibility for the child. Otherwise, with your solicitor's help, you can enter into an agreement to share parental responsibility with your partner. This could be important later if you and your partner split up.

