

Overview

Couples who live together are often under the mistaken belief that they are "common law" husband and wife and that therefore they have the same rights on a relationship breakdown as a married couple. There is however no such legal status. Couples who live together have hardly any of the legal rights that a married couple do.

Property Ownership

There are two ways of owning a property. Firstly there is the legal title (this being the person(s) named on the title deeds) and secondly there is the beneficial ownership (this being the entitlement to the equity in the property). It does not necessarily follow that the legal and beneficial ownership will be the same. A beneficial interest can even exist if you are not named on the title to the property and the legal owner can hold the property on trust for you and/or him/herself.

If you are named on the legal title

If your name is on the title deeds of the property then you will hold it as either joint tenants or as tenants in common. If you are unsure as to how you own your property we can help you establish whether you own it as joint tenants or tenants in common.

Joint tenancy, or tenants-in-common?

If you have purchased your property after 1 April 1998, the transfer document (called a TR1) should contain an express declaration of your beneficial interests. You may also have entered into a separate document either at the time of purchase or subsequently, called a Deed of Trust.

If you own a property as joint tenants, then in the absence of fraud, or mistake, or evidence of a subsequent agreement, you will own the property in accordance with the declaration in equal shares.

If there is an express declaration of your beneficial interest, the property will be held as Tenants-in-Common in accordance with the shares referred to (such as 50:50 or 75:25). Some couples do this to take account of circumstances where one may have paid more to the purchase price at the outset.

The Supreme Court has decided that where it is not possible by direct evidence or inference to ascertain your intentions they can decide your shares by looking at what they consider to be fair. Financial contributions are relevant but there are many other factors which the court may take into account.

If you are not named on the legal title

In the absence of an express declaration in a deed or other document a beneficial interest may be acquired by way of a



constructive or resulting trust. A beneficial interest may also be acquired if you have been promised an interest in the property and acted upon that promise to your detriment.

A resulting trust can be found to exist by reference to the contributions made to the property, either at the time of purchase or subsequently. Contributions can be either direct contribution to the purchase price or deposit or by being a party to the mortgage. The contributions will nearly always result in a corresponding beneficial interest, although cases of resulting trusts these days are quite rare.

A constructive trust can be implied if a common intention about the beneficial ownership either at the time of purchase or subsequently can be established. It is not necessary to have an explicit conversation about the beneficial ownership. The court will look at the conduct of each of the parties.

Ownership of other assets and liabilities

Any assets held in joint names (such as bank accounts or endowment policies) will be owned equally and will pass to the survivor in the event of death.

For assets held in sole names (for example pensions or sole bank accounts) these remain your property and free from a claim by your cohabitant. Gifts will remain the property of the person to whom the gift was made.

If you have joint debts, then you will be jointly and severally liable for the debt. The debt company will not be concerned with who has had the benefit of the funds and in the event of default on the loan will pursue the party most likely to be able to clear the debt.

Maintenance

Unlike married couples, cohabitants have no claims against each other's income. Cohabitants with children will be entitled to child maintenance payments and can apply to the CMS and for financial assistance under Schedule 1 of the Children Act 1989. For further information please refer to our children fact sheets.

Considerations in the event of death

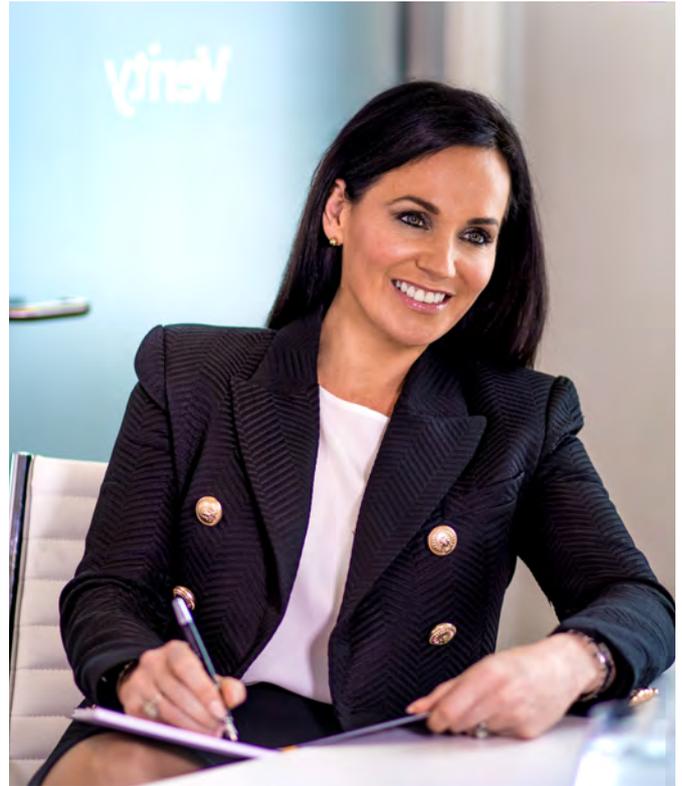
It is important that you establish how you own your property as this will affect how the property is dealt with on death. If you own a property as joint tenants then on death the property will automatically pass to the survivor of you, regardless of what is said in your will.

If you own the property as tenants in common the property will pass in accordance with the terms of your will. If, however you do not have a will then the property will pass in accordance with the rules of intestacy.

Cohabitants will not automatically inherit from one another and will not inherit from one another under the rules of intestacy. Therefore the only way you can provide for a cohabitant on death is to make a will.

How to protect your interests

To ensure that you own your property as you intend it is important that either at the time of purchase or subsequently you have an express declaration of trust in a living together agreement or a deed of trust. You should also review your agreement as your circumstances change and ensure your agreement is updated.



Your living together agreement can set out how the mortgage and other property costs will be paid. It can also provide the framework in the event of a separation and can cover not only entitlement to the net equity in the property but also provide for the division of other assets or debts and provide for maintenance payment

If you currently own your property as joint tenants, you can consider severing the joint tenancy. This can either be by agreement or unilaterally by serving notice on your co-owner. You can then enter into a living together agreement and a will to specify where your interest will pass on your death.

If you are not the legal owner but do have a beneficial interest, you may be able to apply to the Land Registry for a notice to be registered against the title to the property. This will stop your partner selling or otherwise dealing with the property without prior notice to you.

To find out more, please contact our team now on

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