

COHABITATION

Cohabiting couples are treated differently under the law to married couples. Also, when we talk about cohabiting couples on this page, it means either heterosexual or same sex couples.

Many people who live together – or cohabit – believe that after six months or so, they become the common law husband or wife of their Partner; and that in turn this means they establish some legal rights – for example, maybe having an interest in their Partner's home. It can come as quite a shock, if the relationship ends, to be told that there is no such thing as a common law husband or wife.

If a couple are not married, their rights over the house one or both of them may own are governed by Trust Law – the main law can be found within the Trusts of Land and Appointment of Trustees Act 1996 but there is also a lot of case law – i.e. decisions by the House of Lords, and Court of Appeal made in earlier cases which flow down to the “lower” Courts where most cases are decided. It is a complex area of the law and in this page we can only touch on the very tip of the iceberg and in quite general terms.

If the house is owned by only one person, generally the other person would only be able to establish an interest in it if they have contributed money to its original purchase, or paid a lump sum off any mortgage, or paid for work to the house which has enhanced its value (i.e. had an extension built) and there has been some expressed intention that this would give the non-owner an interest in the house. This last requirement can only really be decided by detailed statements being given by the couple and any other witnesses, about any conversations that took place at the time the money was paid, or perhaps later.

Simply paying towards the bills is not enough to establish an interest in the house, nor is having a long relationship.

If the couple have children living in their household, then claims can be brought separately for provision to be made for the children to be housed, and if the children have any other needs which require a capital payment to be made e.g. school fees and the like. These applications are brought under the Children Act 1989. Once the children are independent, funds provided for housing are usually passed back, as it is not intended to be an indirect route for the non-owning Partner to claim funds.

If the house is owned jointly, then any Trust Deed signed will usually be conclusive as to what shares each of them holds. This Trust can be established within the Transfer Deed – which is the document signed at the time of purchase of the house – as the Deed contains a section in it called “Declaration of Trust”. If there isn't a Deed, then we look at whether any extra money has been paid towards the house by only one person; and failing that, generally it would mean equal shares.

Where the couple have children living in their household (and this can include where the children are the natural children of one of the couple) it is possible to delay payment of one owner's share, to ensure the children continue to have somewhere to live. Each case is dependent on the circumstances surrounding that family, and whether this might be applicable to you can only be advised on having taken full and detailed instructions from you; and liaised with your Partner and their solicitor.

The best advice has to be to sort out from the beginning, ideally with a Trust Deed being signed, how you own the house with your Partner.

There are no claims to be made for cohabiting couples for such things as maintenance, or pension claims. Obviously maintenance is payable in respect of any dependent children, and if this cannot be done by agreement, then application must be made to the Child Maintenance Service or can be made to an Arbitrator or the court.

As always, the best advice is to try and discuss any issues that arise, and consider attending mediation together or going through the collaborative law process to look at your options and settle the issues between you. If this is not possible, though, an Arbitrator or Court application can be made either in relation to ownership of the property and/or financial claims for the children.