

Myths of Common Law Marriage

Housing and Property Rights

When embarking upon a relationship, people rarely consider from the outset what exactly is going to happen in the event that the relationship fails. What protection is in place to ensure that the breakdown of a relationship does not adversely affect one member or the other?

It may seem uncomfortable to consider the potential failure of a long-term relationship before the fact. However, not understanding the risks involved with **cohabitation**, or relying on the myth of common-law marriage could lead to avoidable future hardship.



The Myth

The myth, that remains popular today, is that an unmarried couple who live together for a period of time – usually several years – can be considered to have the same legal rights as married couples and civil partners. This is false.

Unmarried “common-law” couples are not protected under property law. One common-law partner cannot stop their ex-partner from selling the property if they do not have a beneficial interest in the home. The length of time the common-law partners spent together is not a consideration under English property law.

A common-law partner may pursue a claim they have an interest in the property. This is determined by courts and follows more complicated trust and estoppel legal framework. As a result, establishing interest for common-law partners after the end of the relationship can be a very expensive litigation process.

What can be done to protect your interests?

Solution for Cohabitants

It is possible for cohabitants to create a **cohabitation agreement**, like a form of contractual obligations that may help determine – in the event of a dispute – what the intentions were for dividing property. However, it should be noted that a cohabitation agreement is not legally binding, so should be accompanied with another legal document such as a will, or declaration of trust in which property interests can be stated.

Alternatively, cohabitant couples could formalise their relationship through marriage registration or by declaring a civil partnership, and gain the following legal benefits.



Married Couples vs. “Common-law”

Tenancy

Married couples share the right to live in the matrimonial home, regardless of whose name is on the tenancy agreement. One married partner cannot eject the other from the matrimonial home without specific court instruction.

You have the right to request the landlord remove a name, or transfer a tenancy agreement to an ex-partner only if both partners agree to do so. This is the common scenario when separating couples can reach an agreement about who will stay in the home.

You have the right to apply to court for tenancy agreement transfer, if an agreement between partners cannot be reached. The court will often decide in favour of the partner who retains majority custody of children, in case children are involved in the separation.

Common-law partners hold none of these rights, and can be asked to leave depending on whose name is on the tenancy agreement.

Home-owners & common-law couples

The rules relating to common-law couples and home-owners rights vary depending on who the owner of the home is, and whether there are any beneficial interests.

Sole owners have the right to stay in the home. Although you can request that your partner leaves the marital home, you are not allowed to eject them if they can demonstrate that they have a **beneficial interest** in the property.

Joint owners have equal rights to remain in the home. The only condition that may change this is if the courts find that it is in the best interest of any affected children that either ex-partner removed from the residence. However, this does not affect the ownership, but access to the property.

The partner of a sole owner does not have immediate rights to remain in the home and can be asked to leave by the owner. The only defence against eviction would be to apply to court to determine if you have a beneficial interest in the property. The court may then award the right to remain (an **occupation order**) or to seek a share of the value if the property is sold.

Right to remain & married couples

Both of the married partners have equal rights to remain in the marital home, regardless of whose name is on the mortgage. This is referred to as **home rights** and are automatically gained at the time of marriage. However, if one partner is the sole owner of the property, the married partner must register their home rights in order to protect himself or herself from risk of eviction. Only a court order can remove a partner's home rights.

Both sole and joint owners of a marital home are unable to sell the property without the express agreement of both parties.

Home rights and ownership of a marital home can only be modified by the court, typically during divorce proceedings.

Taking Action & Disputes

If you are a cohabitee without a property in your sole name, there is a legal framework to protect you in cases of domestic violence, or when children are involved in the breakdown of a relationship.

The Family Law Act 1996 provides cohabitants the right to apply for an occupation order to the family home under particular criteria. This allows the courts to temporarily transfer property rights, and impose restrictions to interactions within the family home.

The Children Act 1989 provides the courts the power to transfer ownership based on the best interests of the child within the relationship. This allows

courts to determine what is in the best interest of any children involved.

Occupation Order

If you're a victim of domestic violence and meet the requirements below, you may apply for an occupation order. The court order states who can live in the home or enter the surrounding area.

- If you own or rent the home and it is, was, or was intended to be shared with a husband or wife, civil partner, cohabitant, family member, person you're engaged to or parent of your child
- If you don't own or rent the home but you're married or in a civil partnership with the owner and you're living in the home
- If your former husband, wife or civil partner is the owner or tenant, and the home is, was, or was intended to be your shared matrimonial home
- If the person you cohabit or cohabited with is the owner or tenant, and the home is, was, or was intended to be your shared home

Always seek advice from a legal professional, the Citizens Advice Bureau (CAB), or a family law solicitor.



Defining some terms

Cohabitation refers to an opposite or same sex couple who live together but aren't married. Traditionally referred to as "common-law" marriage.

Cohabitation agreement is a non-legally binding agreement that courts can use to help determine the outcome of property disputes in the absence of marriage or civil partnership status.

Beneficial interest is a court recognised set of circumstances that provide security for the partner who does not own a share of a disputed property.

Occupation order is a court order providing access to a property for a partner, usually for a limited duration, until the dispute can be resolved.

Home rights is the term used to refer to the automatic marital right for both partners to stay within the marital home regardless of who owns the property or who is listed on the mortgage.

Useful documents

<https://www.citizensadvice.org.uk/family/living-together-marriage-and-civil-partnership/living-together-and-marriage-legal-differences/>

<https://www.citizensadvice.org.uk/law-and-courts/legal-system/taking-legal-action/>