



5 things to think about when you cohabit in a non-rented home



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FAMILY LAW

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Between the years of 2008 to 2018 there has been a 25.8% increase in the number of cohabiting couple families as opposed to married couple, or lone parent, families. Although married couple families are still the most common, cohabiting couple families are the fastest growing family dynamic. In other words, more couples are not just cohabiting before they get married but are choosing to cohabit long term after the birth of children.

The myth of 'common law marriage' still persists and perhaps this is part of the reason that so many couples remain unmarried today, thereby potentially exposing themselves to greater risk on separation, as well as to less generous tax provisions.

Here are some things that you should consider before deciding whether to cohabit either in the short or long term.

1. Inheritance tax relief for married couples and registered civil partners

If you are married or in a registered civil partnership, the whole of one spouse's or civil partner's estate passes tax free to the other spouse or civil partner upon death. In other words, if a married couple or civil partners own a property it will pass free of tax to the surviving spouse or civil partner and only be taxed on the second death before passing to the children.

If you are not married or in a registered civil partnership and are unfortunate enough to lose your partner, there is a potential that you may find yourself having to sell the property to pay inheritance tax. One way around this problem might be to take out insurance to cover the potential tax owing.

2. Who will own the property?

Are you going to buy your property in joint names or just in one party's name? If one party is making all the payments (deposit, related purchase costs and mortgage payments), you may feel that the property should be held solely in that party's name. Whereas this would have no impact for married couples, the financially weaker party in an unmarried, cohabiting couple (or one that has not registered a civil partnership) would probably not then be able to make any claims against the property on separation (save for under particular circumstances). This may be fair in the short term but not necessarily in the long term after the birth of children, especially if one party is to give up working to look after the children.

One way around this might be to give credit to the party who has put in more capital to the purchase of the property by owning the property in joint names but in unequal shares.

3. Joint tenants vs tenants in common

Not many people realise when they buy a property in joint names that there is a choice as to how to share the ownership. Unless you specify, the legal ownership will automatically be held as joint tenants. Joint tenants are 'jointly and severally liable' in relation to the property (in other words, equally responsible) and if one party dies then the other will automatically inherit the deceased



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joint owner's share of the property. In the event of separation, each party would automatically be considered to own 50%.

Upon separation you would want to consider changing the ownership to tenants in common and making a Will if you do not want the other party to inherit your share. In any case you will be deemed to own the property in equal shares.

If you wish to reflect the fact that one party has put more into the purchase price for example, you could hold the property as tenants in common with different percentage shares. You and your partner would need separate legal advice to do this. You would have a declaration of trust to reflect the percentage ownership. If one of the owners dies then that person's share will pass to their estate as opposed to passing automatically to the other owner. This is why it is very important to make a Will if property is held as tenants in common and you wish for the property to pass to the co-owner on your death.

4. What if my partner is moving into a property I already own?

It is possible under certain circumstances for a party who is not named as the owner of the property to establish an interest in that property. This might occur if your partner contributes towards the mortgage or capital value of the property or pays for some works to be carried out or carries out works on the property themselves. You may also give the other party an interest by telling them that the house is theirs as well as yours and that you want everything to be shared.

Your intention, your partner's understanding and his or her consequential actions will be key to your partner being able to establish a claim against you for a share of the property, even if nothing is written down.

5. The solution: a cohabitation agreement

Litigating (going to court) to argue over who owns what share in a property is extremely expensive and uncertain and you could end up paying the other person's legal costs in full if you lose.

Why take that risk?

Instead, you should both enter into a cohabitation agreement that sets out how the ownership of the property and other financial matters will be regulated during your relationship and upon separation. It can be as detailed as you wish, and each party must take their own independent legal advice.

At Teelan & Silwal, we have considerable expertise in drafting cohabitation agreements and can offer our assistance.

