

COHABITATION INFORMATION SHEET

The Law Commission has recently reported on how to modernise the law relating to men and women who live together, but do not get married. Any changes will take some years to be implemented and this leaflet explains the present law as it relates to unmarried heterosexual couples.

Under the present law there is a substantial difference between the rights of married couples and unmarried couples upon relationship breakdown. Married couples have rights against each other set out in one Act, the Matrimonial Causes Act. Unmarried couples have no automatic rights against each other, and to make any claims and deal with disputes, have to rely on a number of different statutes.

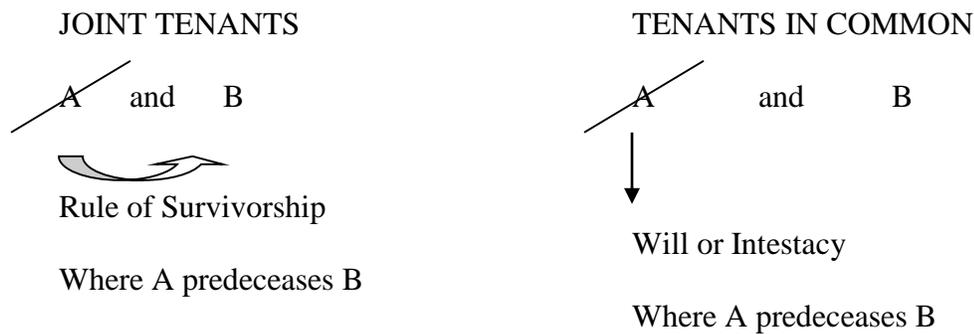
If you and your partner co own a house then you will either co own it as:-

- a) Joint tenants where the starting point, if there is a dispute, will be that you both own the property in equal shares. In exceptional circumstances, this starting point or “presumption”, can be overturned. Your lawyer will advise you if such exceptional circumstances do apply OR
- b) Tenants in common where how you both co own the property (and in particular the shares in the house) will be set out in a Declaration of Trust.

If you co-own a house as joint tenants then the “rule of survivorship” will apply. If you predecease your partner then your interest will pass automatically to your partner and this will happen automatically and notwithstanding what you have said in a will. This rule will apply in the same way (but in reverse) if your partner dies before you.

If you co-own a house as tenants in common then the above rule does not apply. If you predecease your partner then your interest (as set out in the Declaration of Trust) will pass under the terms of your will or the Intestacy Rules.

The following diagram shows the difference between Joint Tenants and Tenants in Common:-



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If you do not co-own a house with your partner, then to acquire an interest in a property owned by your partner, you have to demonstrate that:-

- I. You have either made a direct contribution to its acquisition for example by contributing to the deposit or paying the mortgage OR
- II. You have acted to your detriment (for example by doing substantial works to the house) on the understanding that you would acquire an interest in the house by doing so.

You will not acquire an interest in a house owned solely by your partner by indirect contributions, such as buying the shopping or looking after the house and the children of the relationship, even if you have been together for many years.

If your relationship ends and there is a house involved, there are two types of Court applications which are common. There is an application under the Trusts for Land and Appointment of Trustees Act 1996 (a TOLATA application) which is an application for the Court to order a sale of the house and to work out how the proceeds of sale should be distributed. The other application is under Schedule 1 of the Children Act 1989. This application may only be brought if there is a child(ren) of the relationship. It is an application to the Court for the house not to be sold until the child(ren) are grown up, say 16 or 18 years old. This application, if successful, enables the parent with (primary) care (who does not have an interest in the property) to live in the house with the children. However the parent with care living in the house has to pay all the outgoings usually to include the mortgage. When the child(ren) reach the specified age, usually 18 years old, the house reverts back to the owner.

Couples are not able to claim against each other for maintenance; lump sum payments; or pension orders.