

Family Law Department

Buying a home together and not married?

More and more people in England and Wales are choosing to live together without getting married. Many people believe that after a couple of years they become common law husband and wife, with the same rights as married couples, but this isn't the case.

In fact, couples who live together have hardly any rights compared with married couples or civil partners. Many of them only find this out when it's too late to do anything about it: when their relationship has broken down or their partner has died.

So, what do you need to think about when you are setting up home with your partner?

Which form of joint property ownership should you opt for?

If you are planning on buying a property together you will need to decide how you are going to own the property, agree on it, and make this clear in the documents that are drawn up beforehand.

Importantly, there are two types of joint ownership: Beneficial Joint Tenants and Tenants in Common. Do not be put off by the terminology. It has nothing to do with tenancies and applies to both freehold or leasehold property.

- **Beneficial Joint Tenants.** This means the whole property (and the proceeds of its sale) belong to both of you as one. Neither of you have a separate share which you can sell or leave to anyone else in a Will. If one of you dies, the other becomes the owner of the whole property.
- **Tenants in Common:** This still means that the property is owned jointly but in this case you specify the shares in which you own the property. This could be 50/50 but is more commonly in unequal shares for various reasons e.g. one party has contributed a larger

sum of money towards the purchase price. If one of you dies, their share goes to whomever he or she has named in their Will. This of course is a vital reason to ensure your Will is up to date. If a Will is not made your share of the property will pass under the rules of intestacy (someone dying without leaving a Will). If you are planning to make a Will (and it would be extremely wise to do so) you should have it drawn up before you sign the transfer deed that passes the legal ownership of the property to you. This way you will save the time, money and inconvenience of having to change your Will later. See the Making a Will section of this leaflet.

Which option you choose depends upon personal choice and your particular circumstances. In any event it is vital that you seek your solicitor's advice.

'Joint Tenants' is most commonly adopted between married couples (and those who have registered a civil partnership) where there is perceived to be no advantage in defining separate shares in the property and where it is intended that the property will automatically pass to the other if one partner were to die.

'Tenants in common', on the other hand, will often be used between brothers and sisters, parents and children, unmarried couples, business partners and the like. In these types of relationships it is often desirable for specific shares in the property to be identified and for each owner to be able to leave his or her share in the property to a named person other than the other owner(s).

If you opt to own your property as 'tenants in common' it is important that a separate document is drawn up by your solicitor setting out the shares in the property and how any proceeds of sale would be divided if the property was sold. This document is

called a 'Trust Deed' or a 'Declaration of Trust'.

If you go on to marry or register a civil partnership and then separate the way in which you own property could have a serious impact on how any properties are divided up. In any event it should be noted that your spouse/civil partner may have a claim on any property whether owned solely, jointly as joint tenants or jointly as tenants in common in any subsequent proceedings. This is where a Pre-Nuptial/Registration Agreement can be of significant value in agreeing your own rules as to what would happen in such an event.

Do we need a Will?

Even if you haven't got very much to leave at the moment, you should consider making a Will. This is because if you do not make a Will and you're not married or have not formed a civil partnership, any assets you own solely (such as investments or your share of a property as a tenant in common) will automatically pass to your blood relations. The State will decide who inherits, not you. Your partner will not be entitled to anything you own in your own name alone— which is probably not what you want.

It doesn't matter how long you were together and it doesn't matter how committed you were. Instead the law dictates that assets you own in your name alone, will go to your nearest blood relative, regardless of your wishes. In fact if you don't leave a Will, the Crown is more likely to automatically inherit from you than your partner!

A well drafted Will can make life much easier for those left behind and will ensure your wishes are carried out. It is important that it is drafted by a solicitor.

Do we need a Living Together Agreement?

These are also known as Cohabitation Agreements. The agreement can include details about property, payment of the mortgage, outgoings, ownership of contents, liability for debt, ownership of bank accounts and much more. They are an excellent way of agreeing the day to day workings of living together, and can protect both you and your partner from whatever might happen to your relationship in the future.

Nobody wants to think about separating and it may seem very unromantic but if you have written an agreement it can make a break up a lot less painful and drawn out, and fairer for both of you.

Making a Living Together agreement also greatly reduces the chances of your relationship ending in the worst possible way - in a long, bitter and expensive court battle. It is therefore extremely important that both you and your partner seek independent legal advice.

If at any point you marry or register a civil partnership in the future we strongly recommend that you review all the matters detailed above. Any decisions made as an unmarried couple could have a serious impact on your financial circumstances as a married couple.

Mayo Wynne Baxter LLP has an experienced team of lawyers specialising in Property Law, Will and Family Law who can assist you. They work closely together to ensure all your needs can be met.



For further advice or information please contact a member of our Family Law Team at enquiries@mayowynnebaxter.co.uk
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