

Housing & livingtogether

Orla had no idea she was in such a vulnerable position



“ I'd been with my partner Gareth for eight years when he sat me down and told me our relationship was over. He said that his feelings had changed and he didn't love me anymore. Later that evening, he casually told me that he understood it would take me a couple of weeks, but that I should start looking for a flat right away. I was dumbfounded - less than 3 hours earlier he'd dumped me, and now he was making me homeless too!

I told him that he couldn't do that. I thought I had as much right to be there as he did. We'd been living together for years.

I thought that meant I was his common-law wife and I had rights. He couldn't just kick me out! But I was wrong.

When we moved in we had put the tenancy in Gareth's name. The stupid thing is, it was my suggestion - someone at work had told me that it was easier if the tenancy was in one name. But apparently that means that he has the right to stay and I have to go. It doesn't matter that we've lived together for 9 years, it counts for nothing! A couple of weeks' notice was all I was entitled to. ”

“Less than three hours earlier he'd dumped me, and now he was making me homeless too!”

We'll put the tenancy in my name - it'll be easier

Of course dear - since we'll be together for ever and ever!



COULD BE A MISTAKE.

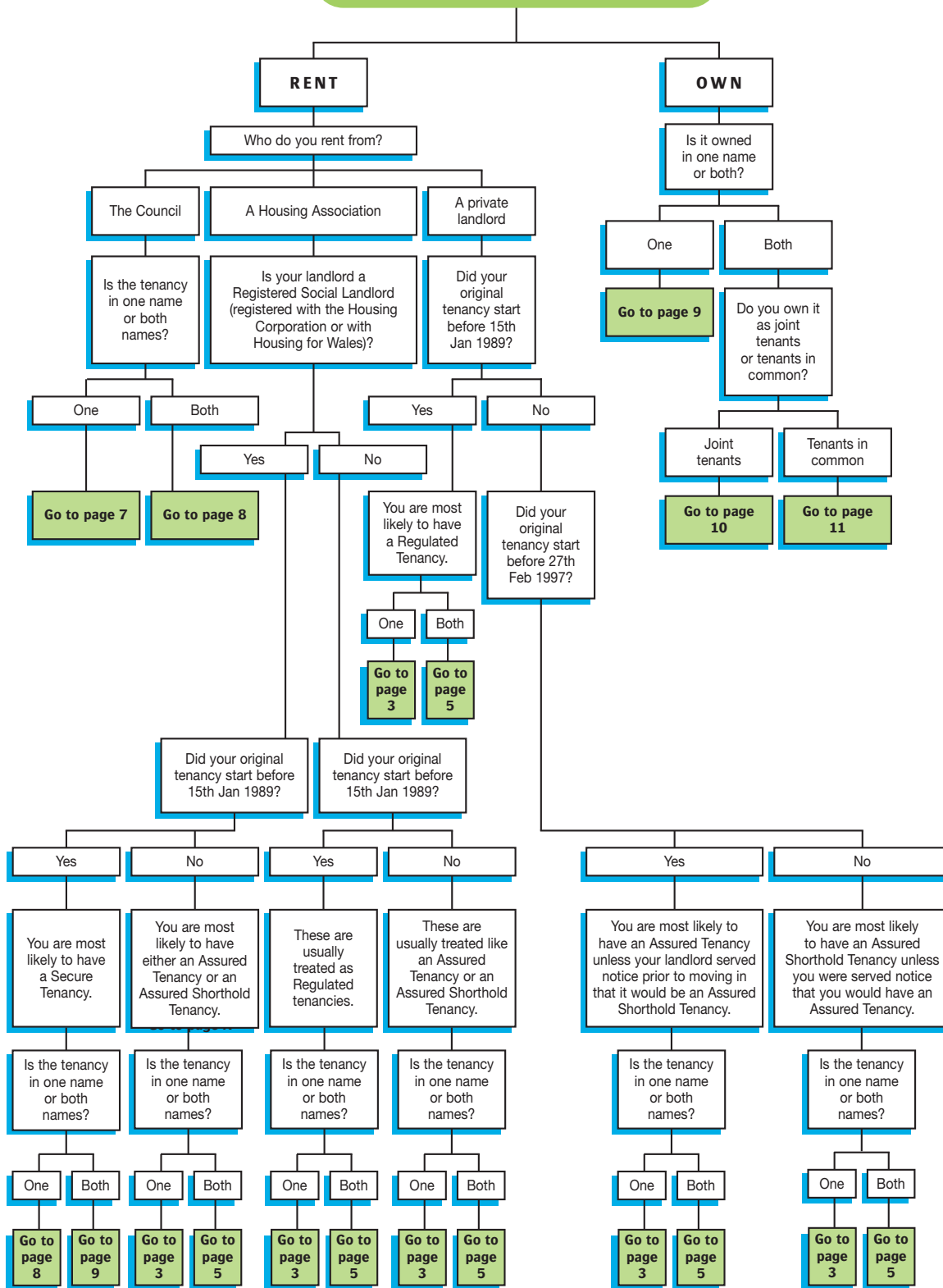
Don't get caught out!

It may not be romantic but it is vital that you know your rights when it comes to your housing. Whether you're thinking of moving in or have already lived with your partner for years, make sure you know where you stand!

This leaflet also shows you what you can do to maximise your rights and ensure your partner (and children if you have any) will still have a roof over their head if anything happens to you.

Housing law is really complicated, and what rights you have depends on a number of issues - use our chart on page 2 to find your way through the maze.

Do you rent or own your home?



Joint tenants or tenants in common?

If you own a home as 'Joint Tenants' you own it in equal shares. If you split up and sell the house, you would each receive 50% of the proceeds unless you had another agreement. If one of you dies the whole house would automatically become the sole property of the other.

If you own the home as 'Tenants in Common' you own it in separate shares and you can specify that they are uneven (for example 65/35). If one of you dies their percentage of the home will go to whoever will inherit their estate. If you bought as Tenants in Common your solicitor should have drawn up a Declaration of Trust clarifying how the shares are divided.

Fixed term or periodic?

All tenancies are either fixed term or periodic tenancies.

A fixed term tenancy is for a set period of time, often six months or one year.

A periodic tenancy is not for a set period of time but continues automatically, usually from week to week or month to month.

Often tenancies start off as a fixed term tenancy and then become a periodic tenancy after the initial fixed term.

Private tenancy in one person's name (and Housing Association tenancies that began from 15th January 1989 onwards)

What happens if you die?

Assured and Assured Shorthold tenancies

If the tenant dies, the tenancy should pass to his/her partner (this includes a same-sex partner).

If this happens, the new tenant is entitled to the same security that their deceased partner enjoyed. This is called "succession".

You can also leave the tenancy to another person in your will. But if you 'inherit' a periodic tenancy in this way the landlord can apply for possession of the home, if he does so within 12 months of the tenant's death. If you inherit a fixed-term tenancy the landlord cannot apply for possession.

In the case of Assured Shorthold tenancies however there is no long-term security. The landlord has the right to possession, without a reason, after the first 6 months of the tenancy, or at the end of the fixed term, whichever is longer. But the right to succeed to the tenancy is useful if you die before your fixed term is up or if your landlord is happy for your partner to stay on.

If the tenant has succeeded to the tenancy themselves it cannot be passed on again.

Regulated tenancies

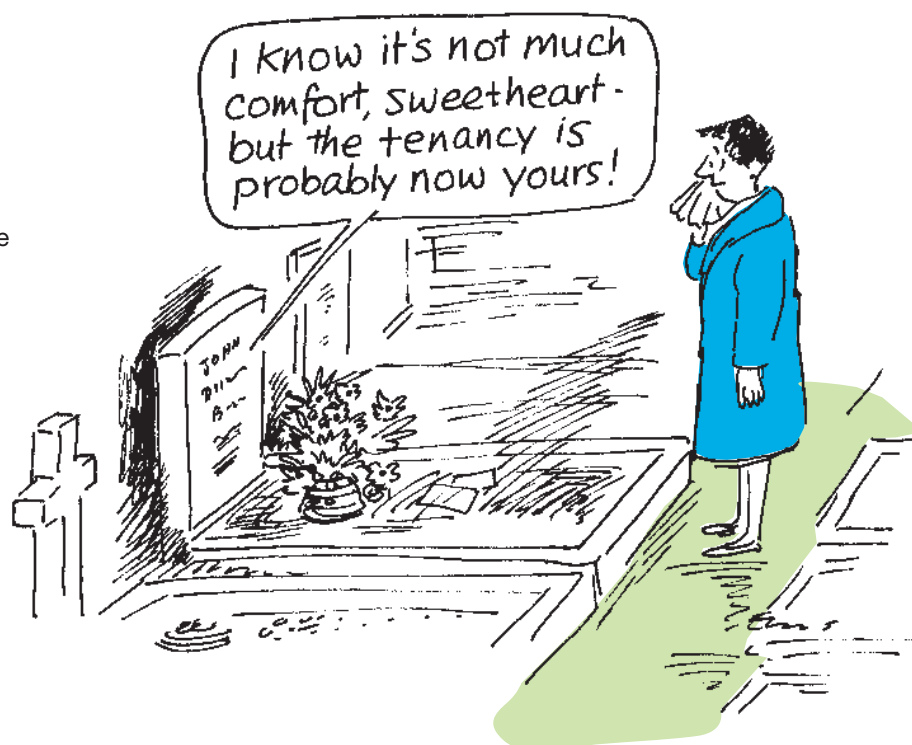
If the tenant dies, the tenancy should pass to their partner (this includes a same-sex partner).

This type of tenancy can, in theory, go through two successions, but only if the second successor has been living with the first and is also a member of the original tenants family - so it's rarely of any use to cohabiting couples. On the second succession it becomes an assured tenancy.

There are some exceptions to these types of private tenancies

If you

- live with your landlord, or
- in a hostel or B&B, or
- in student halls of residence, or
- if your accommodation comes with your job, or
- if you are an agricultural occupier, or
- if you rent from the Crown, you need to seek advice to find out about your housing rights. Go to your local advice agency or CAB.



What happens if you split up?

Assured, Assured Shorthold, and Regulated tenancies

If you are the person named on the tenancy you can ask your partner to leave. He/she should be given reasonable notice but has no right to stay.

If the tenant leaves, you can ask the landlord to allow you to stay on and give you a new tenancy in your name, but he or she doesn't have to do this. In some circumstances if a landlord accepts rent, knowing the tenant has left, it can be argued that a new tenancy has been created.

Under Schedule 7 of the Family Law Act 1996, the court can order the transfer of the tenancy to a live-

in partner when a couple split up. (This means a male-female live-in partner as the Act stands but this might be open to challenge in the courts.) You might ask a court to do this if you would be in a very vulnerable position otherwise (for example, if you will be looking after the children and would otherwise be homeless, or if you had been the victim of violence).

If you have children a court can order a transfer of the tenancy to a parent on behalf of the children under the Children Act 1989. This would typically happen to keep the children housed.

What you can do when you move in or set up the tenancy

Get permission for your partner to move in. If they move in without permission you may be breaching your contract and your landlord might use this against you in the future. Your landlord shouldn't unreasonably refuse permission.

If you have an assured or assured shorthold tenancy, consider making a will leaving the tenancy to your partner.

Only the tenant is legally responsible for the rent.

When the tenancy is in one person's name...

When the tenancy is in one person's name the tenant has the right to evict anyone else without going to court. They should give the other person reasonable notice that they have to leave. This doesn't have to be in writing, but it is a good idea so it cannot be disputed.

What is 'reasonable notice' depends on the circumstances. 28 days is probably the longest period you could expect to be given or be required to give. If there has been violence immediate notice would probably be reasonable.

Tim and Sue

Tim and Sue have been together for 6 years. "For the first four years we lived together in a lovely flat overlooking the river", Tim remembers. "Sue had been living there for years so the tenancy was in her name. The rent was very reasonable and the location was perfect for our jobs so we never thought we'd leave. When we hit a 'rough patch' in our relationship Sue went travelling for a while. The landlord found out Sue had gone and I was living there alone and served notice to end the tenancy. I was advised that I had no right to stay so I left and moved into a bed-sit nearby. Sue came back a couple of months later and we got back together. We then had to find a new place big enough for both of us. I wish we had tried to get the tenancy put into both our names, or at least told the landlord I was there, and we may not have lost that first flat which was cheaper and bigger than any we've rented since."



Private tenancy in joint names (and Housing Association tenancies that began from 15th January 1989 onwards)

What happens if you die?

If one of you dies, the surviving partner keeps the tenancy on the same terms as before.

What happens if you split up?

Assured tenancy or Assured Shorthold tenancy

If you split up and one tenant leaves, the other remains entitled to stay. Both tenants remain responsible for the whole of the rent however.

If you have a periodic tenancy and you split up, either of you can give the landlord notice to end the tenancy. This will end the tenancy even if you are leaving and your partner wants to stay. If you are staying and your partner is leaving, pre-empt this problem by talking to the landlord and seeing if you can get a new tenancy in your name only. Be sure to get a written agreement that they will give you a new tenancy before you give notice to quit the joint tenancy.

If you have a fixed-term tenancy and wish to leave before the end of the fixed term, both of you and your landlord will need to agree to it.

Under Schedule 7 of the Family Law Act 1996, the court can order the transfer of the tenancy to a live-in partner when a couple split up. (This means a male-female live-in partner as the Act stands but this might be open to challenge in the courts.) You might ask a court to do this if you would be in a very vulnerable position otherwise (for example, if you will be looking after the children and would otherwise be

homeless, or if you had been the victim of violence).

If there are children a court can order a transfer of the tenancy to a parent on behalf of the children under the Children Act 1989. This would typically happen to keep the children housed.

If you are going to apply for a transfer of the tenancy it is important to make sure that your partner does not give notice and bring the tenancy to an end. If this happens the court is powerless to order a transfer. You may need to get an injunction to prevent your partner giving notice.



Housing problems

If you are experiencing housing problems, or are concerned about your rights, speak to an adviser as soon as possible. You can get advice on housing issues from your local housing advice agency or Citizens Advice Bureau, or you can contact Shelterline free on 0808 800 4444 (24 hours a day)

Regulated tenancies

If you split up and one tenant leaves, the other remains entitled to stay.

If you stay you may want a new tenancy in your name only, to prevent your ex from having the right to return. This would have to be negotiated with the landlord. To ensure you keep the same level of security you should get legal advice.

In some circumstances if a landlord accepts rent, knowing the tenant has left, it can be argued that a new tenancy has been created. The new tenancy, however, would be an assured shorthold tenancy.

Under Schedule 7 of the Family Law Act 1996, the court can order the transfer of the tenancy to a live-in partner when a couple split up. (This means a male-female live-in partner in the Act, but this might be open to challenge in the courts). You might ask a court to do this if you would be in a very vulnerable position otherwise (for example, if you will be looking after the children and would otherwise be homeless, or if you had been the victim of violence).

If there are children a court can order a transfer of the tenancy to a parent on behalf of the children under the Children Act 1989. This would typically happen to keep the children housed.

What you can do when you move in or set up the tenancy

You don't really need to do much, but you could make a living together agreement and promise not to give notice to quit if you leave, which would make the other person homeless.

You are both 'jointly and severally' liable for the rent which means that if one of you does not pay it the other can't get away with just paying half, but can legally be made to pay it all. You might want to make a clear agreement about how much rent you will each pay between yourselves in a living together agreement. (See our step-by-step guide to Living Together Agreements for details of how to do this). This will only be binding between the joint tenants however. The landlord is still entitled to claim the whole rent from either or both of the joint tenants.

There are some exceptions to these types of private tenancies

If you

- live with your landlord, or
- in a hostel or B&B, or
- in student halls of residence, or
- if your accommodation comes with your job, or
- if you are an agricultural occupier, or
- if you rent from the Crown, you need to seek advice to find out about your housing rights. Go to your local advice agency or CAB.

Let's write it in -
"I promise not to give
notice to quit"!

I agree - or
we could both
be homeless!



Council tenancy in one person's name (and Housing Association tenancies that began before 15th January 1989 onwards)

This is generally a 'secure tenancy' - unless, for example, it is temporary accommodation or goes with a job.

What happens if you die?

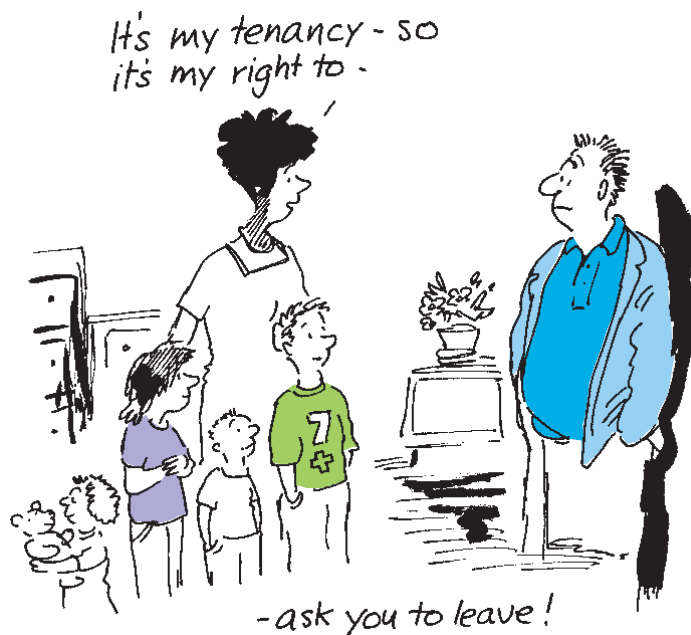
If the person named on the tenancy dies, the tenancy can pass to their partner - this includes a same-sex partner. If you have children, each of the children will have an equal right to the tenancy themselves; you will have to choose between you who should have it. If you can't come to an agreement, the council make the decision. If you are the tenant and it seems likely that there may be a dispute after your death you could say in your will who you would like the tenancy to go to, as this may have an effect on the council decision.

If the tenant has succeeded to the tenancy themselves, it cannot be passed on again.

When the tenancy is in one person's name...

When the tenancy is in one person's name the tenant has the right to evict anyone else without going to court. They should give the other person reasonable notice that they have to leave. This doesn't have to be in writing, but it is a good idea so it cannot be disputed.

What is 'reasonable notice' depends on the circumstances. 28 days is probably the longest period you could expect to be given or be required to give. If there has been violence immediate notice would probably be reasonable.



What happens if you split up?

If you are the person named on the tenancy you can ask your partner to leave. They should be given reasonable notice but have no right to stay.

If you are the tenant and you have decided that you will leave you can formally hand over the tenancy to your partner before you go. This must be done legally, by "deed". It is only possible if there has not been a previous succession and you have lived together in the premises for at least the previous 12 months. It should be done immediately you've made the decision, before you go, as it only applies if you have lived together as a couple for the 12 months prior to the transfer. If you leave without signing over the tenancy, the secure tenancy ends and the Council can start proceedings to kick your ex out. They could also grant a new tenancy, if your ex can show that they meet the Council's housing criteria.

Under Schedule 7 of the Family Law Act 1996, the court can order the transfer of the tenancy to a live-in partner when a couple split up.

(This means a male-female live-in partner as the Act stands but this might be open to challenge in the courts.) You might ask a court to do this if you would be in a very vulnerable position otherwise (for example, if you will be looking after the children and would otherwise be homeless, or if you had been the victim of violence).

If there are children a court can order a transfer of the tenancy to a parent on behalf of the children under the Children Act 1989. This would typically happen to keep the children housed.

What you can do when you move in or set up the tenancy

If you are the tenant you should get permission for your partner to move in. If you don't the Council might have grounds for possession proceedings.

The tenant is the only one who is liable for the rent.

But if the tenant leaves, and you stay, you should make sure that the rent is paid so that the Council don't use this as grounds for evicting you before you have been able to negotiate a new tenancy.

Council tenancy in joint names (and Housing Association tenancies that began before 15th January 1989 onwards)

This is generally a 'secure tenancy' - unless it is for temporary accommodation or goes with a job

What happens if you die?

If one tenant dies, the other tenant continues with the tenancy under the same terms. This counts as a 'succession', which means that you will not be able to pass the tenancy on to another person.

What happens if you split up?

You will have to decide who will stay in the home and who will go, unless you both decide to leave and give up the tenancy. You should discuss this with the council before you make a decision, as they may not agree to grant a single tenancy to one of you.

Either of you can give notice to quit, which will end the tenancy, so if you are staying make sure your partner doesn't give notice.

You may want to have a new tenancy in your name only. If you want to do this make sure you get a written agreement from the council confirming that they will grant you a tenancy in your name only before you give notice to quit the joint tenancy. If you don't, they may try to evict you.

Under Schedule 7 of the Family Law Act 1996, the court can order the transfer of the tenancy to a live-in partner when a couple split up. (This means a male-female live-in partner as the Act stands but this might be open to challenge in the courts.) You might ask a court to do this if you would be in a very vulnerable position otherwise (for example, if you will be looking after the children and would otherwise be homeless, or if you had been the victim of violence).

If there are children a court can order a transfer of the tenancy to a parent on behalf of the children under the Children Act 1989. This would typically happen to keep the children housed.

If you are going to apply for a transfer of the tenancy it is important to make sure that your partner does not give notice and bring the tenancy to an end. If this happens the court is powerless to order a transfer. You may need to get an injunction to prevent your partner giving notice.

What you can do when you move in or set up the tenancy

You don't really have to do much because your position is fairly secure.

You could agree in a living together agreement that neither of you would give notice to end the tenancy without first agreeing it with each other.

You are both 'jointly and severally' liable for the rent which means that if one of you does not pay it the other can't get away with just paying half, but can legally be made to pay it all. You might want to make a clear agreement about how much you will each pay in a living together agreement. (See our guide to Living Together Agreements for details of how to do this). This will only be binding between the joint tenants however. The landlord is still entitled to claim the whole rent from either or both of the joint tenants.

For more information on the Council's housing criteria see www.shelternet.org.uk or get advice from a housing expert to see if you qualify.

Shalini and Pete

In 1995 Shalini met Pete. He was living in a two bedroom flat that he had shared with his father. Pete had succeeded to the tenancy after his dad died. "I moved in in 1996 and our eldest child was born the following year", says Shalini. "Pete could be very organised when he wanted to, and when I moved in we went to the council and asked for the tenancy to be put into both our names, which they agreed to do". The following

year their second daughter was born. 6 years later Pete was in an accident at work and died from his injuries. "Because my name was on the tenancy too", says Shalini, "the kids and I were automatically allowed to stay in the flat, which was a blessing. It was important to us that we stayed here, where all our happy memories are, not to mention Pete's bad decorating! I think the girls needed all the stability they could get at that time."

What happens if you die?

If the owner dies, the home will pass to whomever he or she has named in a will. If they didn't make a will the home goes to their nearest blood relative.

If you were the owner's partner you may be able to bring a claim under the Inheritance Act if you act quickly.

What happens if you split up?

If you clearly agreed that the non-owner would not have a share of the home if you split up, then, although they could take the case to court, there is almost no chance of the claim being successful.

If you agreed in writing that you would share the property, then you can rely on this agreement, unless later events mean that this would be very unfair.

If the non-owner has contributed to the purchase of the home directly (for example, by paying into the

mortgage account, or providing part of the deposit) or indirectly (for example, by paying the bills in return for their partner paying the mortgage) on an understanding that they would have a share in the home, then they can take the case to court and will probably be successful.

If the non-owner gave up something important (like a job or their own home) to come and share your home because they believed that you would share the ownership of it with them, they may be able to bring a claim for a share of the home. The claim would be strengthened if he or she has contributed directly (for example, by paying into the mortgage account, or providing part of the deposit) or indirectly (for example, by paying the bills in return for you paying the mortgage) to the purchase of the home.

If there are children a court can order a transfer of the tenancy to a parent on behalf of the children under the Children Act 1989. This would typically happen to keep the

children housed. In practice this does not mean that the non-owner gets a share of the home, but may get the right to remain in it while it is the home for the children - until they reach 18 or leave full time education.

What you can do when you move in or set up the tenancy

When you move in together (or even later, if you have never discussed it properly) draw up a living together agreement that sets out what you have agreed about the home. If you do not intend the non-owner to gain a share, spell this out clearly. If you are going to share the home, state the shares clearly. See our step-by-step guide to Living Together Agreements for details of how to do this.

If you are the non-owner, think carefully about what you are going to contribute to. You will not get back anything you contribute to buying or maintaining the home.

If there is a mortgage, only the owner is liable for the payments, but if he or she does not pay them the lender will take proceedings to get the home, rather than pursuing the owner for the arrears, which will leave you both homeless.

If, unusually, the owner were to be the one to leave the house, the non-owner might want to keep up the payments. But this will not entitle you to a share in the home unless you have agreed this with the absent owner.

" IF THE OWNER DIES, THE HOME WILL PASS TO WHOMEVER IS NAMED IN THE WILL... "



For more information on what will happen to your property if you die without leaving a will see our wills leaflet at www.advicenow.org.uk/livingtogether

What happens if you die?

If one of you dies, their share will pass straight to the co-owner. The home will not be part of the estate, so cannot be left to anyone else in a will.

The value of the home is counted for Inheritance Tax purposes.

See our finance section for more details about Inheritance Tax.

Steven

3 years ago Steven and Meg bought a house together. At the time Steven was working full time, and Meg was a student and on a low income. They decided to buy the house as joint tenants and contributed equally to the small deposit. Instead of contributing equally to the mortgage payments however, they agreed that Steven would pay them all and Meg would pay for the food shopping.

Unfortunately, Steven and Meg then split up. Arguments about what to do with the house and its contents made the situation even more stressful and unpleasant.

Neither of them had really considered the long-term implications of buying the house jointly, and they had never discussed how they would divide the house if they split up.

Steven felt that he ought to be entitled to most of the house, since Meg's shopping bill didn't come near to what he'd paid off. But because they bought the house as joint tenants and never made any other agreement, Meg is entitled to 50%. "I'm totally stuffed. It seems so unfair that there's nothing I can do about it now," says Steven.

THE CHILDREN ACT 1989 ...



... DEFENDS THE RIGHTS OF CHILDREN UNTIL THEY ARE 18.

What happens if you split up?

On the face of it, you share the home equally. If a 50:50 split is not fair because of what you have both contributed, you can negotiate or take the matter to court.

However it may be hard to make a successful claim if you had clear advice about the meaning of a joint tenancy when you bought the property. On the other hand, if you did not have advice about this from your solicitor when you bought the home, you may be able to sue the solicitor.

If there are children a court can order a transfer of the tenancy to a parent on behalf of the children under the Children Act 1989. This would typically happen to keep the children housed.

This does not mean that they get a larger share of the home, but simply that they can stay in it while it is the home for the children - until they reach 18 or leave full time education.

You can only sell the home if both owners agree to it. This often causes problems if one of you wants to stay in the house and can't offer a fair price to buy the other's share. You can take the issue to court, but this is time consuming, costly, and stressful.

What you can do when you move in

If you buy a home together, think about what you want to do. If you have a joint tenancy you will be treated in law as if you intended to have half shares. If one of you is putting in more to the purchase you are effectively giving this to the other person. Make sure that your solicitor explains this clearly and get separate advice if you need to. Don't just go for a joint tenancy because it seems simpler.

You can change a joint tenancy into a tenancy in common by doing something called 'severance'. You should take legal advice about this.

You are both 'jointly and severally' liable for the mortgage which means that if one of you does not pay it the other can't get away with just paying half, but can legally be made to pay it all. You might want to make a clear agreement about how much you will each contribute to the mortgage repayments in a living together agreement. See our step-by-step guide to Living Together Agreements for details of how to do this.

You might want to make a clear agreement about whether you would sell the home if you split up. See our step-by-step guide to Living Together Agreements for details of how to do this.

What happens if you die?

The value of the home is counted for Inheritance Tax purposes. See the finance section at www.advicenow.org.uk/livingtogether for more details about Inheritance Tax.

If one of you dies, their share goes to whomever he or she named in their will. If they didn't make a will their share will go to their nearest blood relative.

The co-owner may be able to bring a claim under the Inheritance Act. See our wills section for more information.

What happens if you split up?

On the face of it, you own the home in the shares that were specified when you bought the property. If you did not specify unequal shares, the law will treat you as owning it 50:50.

If a 50:50 split is not fair because of what you have both contributed, you can either negotiate a deal or take the issue to court. You would usually have to show that you had an agreement, whether written or simply understood, that you did not have equal shares and that you had contributed unequally along the lines of this agreement.

If there are children a court can order a transfer of the tenancy to a parent on behalf of the children under the Children Act 1989. This would typically happen to keep the children housed.

For more information on what will happen to your property if you die without leaving a will see our wills leaflet at www.advicenow.org.uk/livingtogether



IT IS VITAL THAT YOU BOTH MAKE WILLS...

In practice this does not mean that you get a larger share of the home, but you may get the right to remain in it while it is the home for the children - until they reach 18 or leave full time education.

You can only sell the home if both owners agree to it. This often causes problems if one of you wants to stay in the house and can't offer a fair price to buy the other's share. You can take the issue to court, but this is time consuming, costly, and stressful.

What you can do when you move in

When you buy the home spell out what share you each own in a Declaration of Trust. The solicitor who deals with the purchase can do this for you. You need to take account of what you contributed to the deposit and what you will pay towards the mortgage.

You could also make a living together agreement about this. See our step-by-step guide to Living Together Agreements for details of how to do this.

It is vital that you both make wills. Without a will if one of you dies you are likely to make your partner homeless. See our guide to wills for further details.

You are both 'jointly and severally' liable for the mortgage which means that if one of you does not pay it the other can't get away with just paying half, but can legally be made to pay it all. You might want to make a clear agreement about how much you will each pay in a living together agreement. See our step-by-step guide to Living Together Agreements for details of how to do this.

You should discuss what you would do with the home if you split up - would you sell it? You might want to make a clear agreement about whether you would sell the home if you split up. See our step-by-step guide to Living Together Agreements for details of how to do this.

Further information

Housing Problems

If you are experiencing housing problems, or are concerned about your rights, speak to an adviser as soon as possible. You can get advice on housing issues from your local housing advice agency or Citizens Advice Bureau, or you can contact Shelterline free on **0808 800 4444** (24 hours a day).

Living Together Agreements

For more information about how a living together agreement can help you, and how you can make one for free see our leaflet at www.advicenow.org.uk/livingtogether

Council Housing

For more information on the Council's housing criteria see www.shelternet.org.uk or get advice from a housing expert to see if you qualify.

Wills

For more information on what will happen to your property if you die without leaving a will see our wills leaflet at www.advicenow.org.uk/livingtogether

Inheritance Tax

For more information about Inheritance Tax and what you can do see the finance section at www.advicenow.org.uk/livingtogether

This leaflet is one of a series produced by advicenow.org.uk's LivingTogether campaign.

The LivingTogether campaign aims to increase awareness and understanding of the legal issues around living together. We explain exactly what rights couples living together *really* have, and show you practical ways you can protect yourself and your partner.

We provide information and practical material to help you ensure your partner will inherit from you if you die; understand your housing rights and show you how to protect them with a Living Together agreement, explaining financial implications and what you can do to minimise them, and how to ensure your partner is treated as your next of kin in an emergency.

For more information about your rights when you are living with your partner see www.advicenow.org.uk/livingtogether

**advice
services
alliance**

**ONE
PLUS
ONE**

The LivingTogether campaign is led by Advice Services Alliance in partnership with One Plus One (www.oneplusone.org.uk) and is funded by the Department for Constitutional Affairs.

Advice Services Alliance (ASA), the co-ordinating body for UK advice services. ASA members include Advice^{UK}, Age Concern England, Citizens Advice, DIAL UK, Law Centres Federation, Shelter and Youth Access. ASA works with its membership and government to develop policy on delivery of legal and advice services; champions the development of high quality information, advice and legal services; and provides supporting services to advice networks.

The LivingTogether Campaign applies to England and Wales only. The law in Scotland and Northern Ireland is significantly different.

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**Plain
English
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Plain English Web Award 2004

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