

Factsheet 10: Relationship breakdown and home rights

This factsheet provides you with useful information on what rights you have to your home following relationship breakdown.

Do I have any rights?

You have the right to remain in the family home following a split from your partner if you have legal ownership of the property (i.e. the sole or joint owner, or sole or joint tenant. These are known as “pre existing housing rights” and are not dependent on a person’s relationship or whether they have dependent children. These rights give you:

- The right to remain in your property unless excluded by a court order
- Occupation of the accommodation by the sole tenant or any of the joint tenants will maintain secure, assured or assured shorthold tenancies
- The right to pay the mortgage/rent (they will also be liable for any arrears)
- The right to exclude others from the property. Please note a joint tenant will not be able to exclude another joint tenant without a court order
- An automatic right to defend possession proceedings
- The right to end a tenancy. Please note for periodic tenancies one joint tenant acting alone could end the tenancy for all joint tenants
- If owned, the owner has the right to sell the property, but all joint owners will need to agree to the sale

You can also have pre existing housing rights if you have beneficial interest in the property even if you do not have legal ownership of the property. Non owners can attain beneficial interest if:

- The non owner paid money directly towards the acquisition of a property unless it was clearly made as a gift, the non owner may be able to claim a beneficial interest in the property
- The non owner only made indirect financial contributions such as paying the bills, you can only claim beneficial interest if there is some understanding that the non owner is to get a share of the property. There must be evidence of this understanding but it does not have to be in writing. This is known as constructive trust.
- The non owner has made no financial contributions but has acted to their detriment (such as selling another home or giving up some of worth like a secure tenancy), in reliance of a promise that they would obtain a share if the property then this may give rights similar to beneficial interest by the way of common law proprietary estoppel. Such cases are rare.

Please note that unless the non owner has made some sort of financial contribution to the purchase or improvement of the property, and there is documented evidence of the intention to give beneficial interest it is very difficult to establish that a non owner has beneficial interest in a property.

If you have beneficial interest in a property you will have the right to:

- Occupy the property (in most cases)
- A share of the proceeds once the property is sold
- Force or delay a sale of the property, but you will need to obtain a court order to do this

The non owning partner or the former partner will need to apply for an order under s14 Trusts of Land and Appointment of Trustees Act 1996 (TLATA) for a “declaration of interests”.

Who does not have pre existing rights?

You will not have any housing rights if:

- The tenancy is solely in the name of the partner
- The property is owned by the partner

You will only have the right to occupy the property for as long as the partner gives you "permission" to live there. Under housing law:

- They are usually only entitled to reasonable notice to leave from their partner
- The landlord/mortgage company can refuse to accept payments of rent/mortgage from them, even if the partner is not paying. They will however have the right to claim housing benefit
- If the partner is an assured or secure tenant who has left the property permanently it may be harder for the client to stay in the property
- Even if the sole tenant/owner does leave the landlord/lender must still apply for an order from the county court if they wish to evict them
- They can not defend possession proceedings from the landlord or lender

Home rights for spouse / civil partner of tenants.

A non tenant spouse/civil partner have the right to:

- Occupy the property even if asked to leave by their tenant spouse/civil partner
- Occupy the property even after their tenant spouse/civil partner has left and will maintain a secure or assured tenancy
- Pay rent to the landlord
- Defend possession proceedings
- The non tenant spouse/civil partner will not be liable for rent arrears of his/her partner (although the landlord may terminate the partner's tenancy on the basis of those arrears, so the non tenant may have to pay towards the arrears as well as the current rent in order to preserve the tenancy)
- The non tenant spouse/civil partner may, however, be liable for court costs and mesne profits for refusing to leave after a possession order has expired

In order to protect your home rights against third parties the non tenant spouse/civil partner should notify the landlord of their presence and the marriage/civil partnership.

Home rights for spouse/civil partner of owners.

A non tenant spouse/civil partner has the right to:

- Occupy the property even if asked to leave by their tenant spouse/civil partner
- Pay the mortgage
- Defend possession proceedings
- The non tenant spouse/civil partner will not be liable for mortgage arrears of his/her partner (but the non tenant may have to pay towards the arrears as well as the current instalments in order to prevent repossession by the lender)
- The non owner spouse/civil partner may, however, be liable for court costs for refusing to leave if the mortgage lender applies for a warrant of possession after a possession order has expired. Please note the mortgage lender has no obligation to inform the spouse/civil partner of the borrower about any arrears, the onus is therefore on the spouse/civil partner to make enquires and find out what the situation is.

In order to protect your home rights against third parties the non tenant spouse/civil partner should inform the mortgage company of their marriage.

If there is a threat that the owning spouse may sell the property, then the non owning spouse/civil partner can complete form HR1 and apply to the Land Registry to put a notice on the land register. This notice does not mean that the property cannot be sold but if anyone brought the property with the notice in place, then they would be bound by any future decision the court makes about disposal of the property. Subsequently, no buyer would go ahead with the purchase when such a notice is in place. Please note that the owning spouse/civil partner will be informed when the notice is made.

Home rights for Cohabitees, ex-cohabitees and divorcees.

Cohabitees, ex-cohabitees and divorcees do not automatically have home rights – they will first have to apply to court of an occupation order. An occupation order is an order from the court that may grant temporary home rights and are usually short term measures to allow the parties' time to pursue more long term housing solutions. Please note that the court will be very reluctant to grant occupation orders unless there is current domestic violence or to protect children.