

MannBenham

Conveyancing | Info-Sheet

Top Tips to Protect Yourself When Buying a House with a Friend or Partner

Buying a house is an exciting time and especially if you have someone to share it with, but in all the flurry deciding on the décor means many people forget the practicalities.

If you're buying as a happy couple, it's easy to overlook the possibility that you may break up one day. Even good friends teaming up to get a leg on the property ladder don't like to think they will ever fall out.

While it may not seem in the spirit of things, it is important to protect yourself if the relationship does turn sour further down the line – and it's not as complicated as you might think.

Declaration of trust

A '*declaration of trust*' is a formal legal document which sets out how an asset or property is owned. If one of you has a greater interest in the property – for example, if you have contributed more towards the deposit and/or mortgage – then you may wish to have one drawn up to reflect this and can do so as well as a cohabitation agreement.

Where a declaration of trust exists, it will be easy to determine the beneficial interests in the property as when buying it the Land Registry forms require co-owners to specify how the beneficial interest in the property is held. Alternatively this can be recorded in a separate agreement.

Where there is no declaration of trust the position can be very unclear and if those concerned are unable to reach an agreement then the matter can be determined by the court, which is both a costly and time consuming exercise.

Cohabitation agreements

A cohabitation agreement is a written agreement between individuals who live together, or intend to live together. The agreement can record who is bringing what assets into the relationship, how any property acquired during the relationship should be owned and who will be responsible for what. In addition an agreement can provide a framework for what will happen in the event of a separation. The simplest way to think of it is as an insurance policy, which you hope you'll never have to use, but is there just in case for your own peace of mind.

Much like a pre-nuptial agreement, there is a common misconception that cohabitation agreements are legally binding. This is not the case, at least not in the jurisdiction of England and Wales. Whilst they are lawful, they are governed by the ordinary rule of contract which means the individual terms or agreement can be challenged in court so seeking legal advice can ensure yours is strongly persuasive. Ultimately, however, it is at the court's discretion to decide whether an agreement should be upheld. It is important that steps are taken to review cohabitation agreements periodically, particularly where there is a significant life event such as the birth of a child, to ensure an agreement remains valid.

People often think that couples who have been living together for a long period of time are '*common law*' husbands and wives, but there is no such legal status in the UK. In the event of separation, cohabiting couples will not have the same rights and protections as people who are legally married.



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01624 639350 or **enquiries@mannbenham.com**

How can I protect the cash I put in?

Where a couple have joint liability for an outgoing, such as a joint mortgage, they are going to be jointly liable. This means the mortgage company is entitled to go after either one of them for repayment. If the mortgage is in the name of one person then that person will be solely liable for the mortgage payments, despite any contributions the other may have made, and if it is in joint names then it is up to them to resolve who owes what and how the contributions towards the mortgage should continue.

A cohabitation agreement can also specify who should contribute what including what proportion should be paid towards the mortgage.

If the property is held as '*joint tenants*' you should consider severing the joint tenancy. This allows the parties to hold the property in unequal shares, which would suit whoever contributes the most towards the mortgage and running of the household. A record of significant payments towards the acquisition, maintenance and improvement to any property could prove vital in establishing whether one party has a greater interest.

If the mortgage is in joint names either individual named can approach the mortgage company to advise them of the position. If one party wishes to stay in the property they can consider re-mortgaging to have a mortgage in their sole name, thereby releasing the other from any continued obligations. It is at the discretion of the mortgage company, however, whether they would be prepared to offer an individual another mortgage as it would effectively be a new mortgage application. If no agreement can be reached between the parties then other avenues should be explored to try and resolve the dispute, such as mediation or negotiations through solicitors. It is often best to consider selling the property and arrange for the net proceeds of sale to be split appropriately between the owners. Ultimately court should be regarded as a last resort.

What is the difference between joint tenants and tenants in common?

You may both be legal owners of the property, but can hold it as '*joint tenants*' or '*tenants in common*'.

If you are joint tenants you each own an equal share of the property. One of the key implications is the '*right of survivorship*'. If one of the joint tenants were to die the remainder of the property transfers automatically to the other surviving joint tenant(s), irrespective of whether a will specified otherwise.

Tenants in common differs in two key respects – firstly you can own different proportions of the property. In addition the rights of survivorship does not apply, meaning if one of the tenants in common were to pass away they can leave their share in a will to someone else, or the rule of intestacy can apply.

You can sever a joint tenancy by giving the appropriate notice to the other tenant, thereby resulting in you being tenants in common. This will necessitate reaching an agreement as to what proportion of the property each tenant owns.

Getting a divorce or separating does not change the status in which you hold the property. If you were joint tenants whilst you were married, for example, your ex could move out of the property, into their own and even cohabit or get married again, but they would still be the joint tenant of the property you live in. For this reason it is advisable for steps to be taken to sever the joint tenancy upon the breakdown of the relationship.

We are here for you...

Contact us today by calling **01624 639350** or by email at enquiries@mannbenham.com to arrange a convenient time to call you back, either by telephone or video call.



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