

A Shelter guide

Updated July 2013

# Relationship Breakdown

Housing rights for couples  
who are splitting up

Shelter

# Relationship breakdown

This guide outlines the housing rights you have if your relationship with your partner or spouse ends. It only provides an introduction to the law in England and does not provide information about divorce/dissolution proceedings.

If you need more detailed information, you should get advice from a Shelter advice service or citizens advice bureau, or call Shelter's free housing advice helpline **0808 800 4444** (open 8am to 8pm Mon to Fri and 8am to 5pm on weekends. Calls are free from UK landlines and main mobile networks).

## Shelter's free online housing information

[shelter.org.uk/advice](https://shelter.org.uk/advice)

In most cases, your housing rights will depend on:

- whether your home is rented or owner-occupied
- the legal status of your relationship (married couples and registered civil partners usually have more rights than couples who are living together as 'cohabittees')
- whether you have children.

You should speak to a specialist adviser or solicitor before making any decisions.

If you are being subjected to violence or abuse, see page 11 – and always call the police in an emergency.

If you live in Wales, Scotland or Northern Ireland the law may be different and you should contact Shelter Cymru, Shelter Scotland or the Housing Rights Service (see pages 44–45).

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## Getting legal help

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Most couples need help to sort out what happens to their home and finances when their relationship ends. The law is very complicated and every case is different.

A specialist adviser or solicitor can look into your situation properly and ensure you don't give up rights that you weren't aware you had.

### Where to get help

Shelter cannot house you but our specialist housing advisers can help you protect your rights. Call our free housing advice helpline on **0808 800 4444** (open from 8am to 8pm on Mondays to Fridays and from 8am to 5pm on weekends) or visit **shelter.org.uk/advice**

Many other agencies also provide specialist advice about relationship breakdown and housing, including Citizens Advice and Civil Legal Advice (for contact details see page 45).

In many cases, particularly if you are divorcing or ending a civil partnership, you will also need help from a family law solicitor. You may only need to see them once, but it's best to find out where you stand. You can find a solicitor in your area through the *Yellow Pages* or by visiting **www.gov.uk/find-a-legal-adviser**

### How much will it cost?

Some specialist services are free (including Shelter's) but you may have to pay:

- **solicitors' charges** – these are based on how much time they spend on your case. Get an estimate before you start, but be aware that fees often go up as a case progresses.
- **court fees** – you will not have to pay a fee if you are receiving income support, family credit, or advice from a solicitor under the legal help scheme or representation under legal aid.

You may be eligible for help with these costs – the Gov.uk website has a Legal Aid Checker that you can use to check whether you're eligible, visit **www.gov.uk/check-legal-aid**

You can read more about court costs on HM Courts Service website (see page 46).

## Short-term issues

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When you first split up, you're forced to make a lot of decisions, eg where you'll each live, whether to divorce/dissolve a civil partnership, and how to deal with financial issues. It is very important to be sure you understand your rights and responsibilities at this stage.

### **Deciding who should stay**

When you first split up, your options are likely to be:

- one person staying in the home while the other moves out
- both leaving and getting new places
- continuing to live together, but as separate households (ie not as a couple).

You may have to make short-term arrangements and then change them later. Discussing the issues and negotiating a mutual agreement may avoid a long and costly legal process. Mediation and/or relationship counselling can help (see page 10) but if you can't agree, you will probably have to go to court.

Although you may want to make these decisions quickly, it's important to check your legal position carefully before you do so. You may have rights you are not aware of.

Decisions on short-term and long-term arrangements often depend on what each of you can afford, what rights each of you have, and what other accommodation is available. Although you may want to avoid the upheaval of moving home, it's important to be realistic about whether you would be able to run and pay for the property on your own. Staying in the home may also be harder to make a fresh start.

## Paying the rent or mortgage

Whether you want to stay or move out, it is essential to think about how the rent or mortgage will be paid. Falling behind on payments could result in:

- eviction if you rent your home or repossession if you own your home
- your landlord or lender taking you to court to force you to pay off the arrears
- a bad credit rating, which would make it difficult for you to find a new home
- jeopardising any legal rights you might have to the home.

If the property is in your name (whether solely or jointly), you are liable for the rent or mortgage. This is the case even if you leave and the other person stays. You need to act quickly if payments are missed. See Shelter's free guides *Rent arrears* and *Mortgage arrears* for more information and contact organisations that deal with debt or a Shelter adviser (see page 44–46).

If the property isn't in your name, you could apply for **home rights** (see page 16), which would give you the right to pay the rent or mortgage. This could protect your interest in the home.

## Tenants

If you are claiming benefits or have a low income you may be entitled to housing benefit or local housing allowance. You can apply through your local council. If you're already claiming and your ex-partner moves out, your entitlements may change so you need to update your claim. See Shelter's free guide, *Housing benefit* for information about the rules.

## Homeowners

If you are claiming income support, income related employment and support allowance or income-based jobseeker's allowance, you may be entitled to Support Mortgage Interest (SMI) payments. SMI will only help you to pay the interest on the loan, not the capital you originally borrowed. Payments normally start 13 weeks after you started claiming, but if you are aged 60 or over and claiming pension credit, you will

receive help straightaway. See Shelter's free *Mortgage arrears* guide for more information.

Whether you are entitled to SMI or not, it's always best to let your lender know what's going on. If you don't contact your lender when payments are missed, they are likely to take action against you. Your options may include:

- temporarily reducing monthly payments
- adding unpaid instalments to your overall mortgage amount
- extending the mortgage term to make monthly payments more affordable
- switching to a different type of mortgage.

Lenders are usually more willing to negotiate if the value of your home has increased since you bought it.

## **Divorcing/dissolving a civil partnership**

This is not a short-term answer to housing problems, as it is a long and complicated legal process. However, you could apply for court orders to do with money and the home at the same time. In fact, orders made as part of divorce/dissolution proceedings will usually overrule any that have been made earlier.

The courts can make orders such as:

- regular maintenance payments
- lump sum payments
- property adjustment orders (if the home is owner-occupied)
- tenancy transfers (if the home is rented)
- pension adjustments.

If you don't legally end your relationship, living apart is enough to class you as separated for tax and benefit purposes. Even if you continue living together, you can be classed as separated but it is helpful to get a **deed of separation** to formalise what's been agreed.

If you're not married or in a registered civil partnership, the courts have fewer powers to make orders about what happens to the home. You will have to rely on what has been agreed in the past and contributions you have both made.

## **Arrangements for children**

The courts expect couples to agree where children will live and how access will work. If you can't decide between yourselves, then the courts will decide for you. Their decision will be based on what they believe is best for the children. Mediation is often useful in this situation (see page 10).

## **Rights to stay in the home**

You can only stay in the home if you have a legal right to do so. Your rights depend on:

- the legal status of your relationship
- whether you are a joint or sole tenant or owner, and/or
- whether you can enforce any rights you might have through the court.

## **Sole tenants/owners**

If only one person's name is on the tenancy agreement or title deeds, that person has the right to stay in the home, unless they have been excluded by an occupation order (see page 18). If that person wants their ex-partner to stay in the home instead, they may be able to have the tenancy transferred (see page 34), or the title deeds and mortgage changed.

If you are married or in a registered civil partnership with the sole tenant or owner, you will have home rights (see page 16) which give you similar rights to a joint tenant or owner. If you can't agree who will stay, you will have to try mediation or ask the courts to decide for you.

## **Joint tenants/owners**

If you are a joint tenant or owner, you both have equal rights to stay in the home unless one person has been excluded by an occupation

order. If you can't agree, an occupation order may be the only way that one partner can be forced out of the home.

### **Married couples/civil partners**

If you are the spouse or civil partner of the sole owner or tenant, you will have home rights. This means that you both have the right to stay, unless one of you has been excluded by an occupation order.

If you can't decide who is going to stay in the short-term, you may be able to apply for an occupation order to enforce your short-term rights, or to keep your partner out. If you can't decide who will stay in the long-term, then the courts can decide.

### **Non-owner cohabiters**

If you're cohabiting and are not the sole or joint owner of your home, you may still be able to stay if you can prove you have a **beneficial interest** in the home. This means you have made a contribution (usually financial) to the home (see page 37).

Where there's a dispute between parents over who stays in the home, the court will always favour the parent who will be living with the children. Where both parents will be living with children and one parent wants to remain in the home, the local council may have a duty to rehouse the other parent and their children, provided it accepts that it is unreasonable for both parents to live together.

### **Finding alternative accommodation**

If you decide to move out, try to find somewhere to live before you leave. Shelter's free guide *Finding a place to live* lists all the main options. Your local council or housing office can also offer advice.

You could also consider making a homelessness application to your local council – you don't have to be on the street to do this. Depending on your circumstances, the council may have a duty to rehouse you immediately. If not, it should still give you advice and assistance. See Shelter's free guide *Homeless? Read this* to find out more.

## Mediation and relationship counselling

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If you have lost, or may lose your home due to the breakdown of your relationship, relationship counselling or mediation may help.

If you are still a couple but things are not going well, a **relationship counselling** organisation may be able to help you to resolve any difficulties, or help you to come to terms with splitting up. You don't have to go as a couple – if your partner refuses to go, you can go alone.

The largest relationship counselling organisation is Relate. It provides services face-to-face, online, or over the phone.

If you've already split up, **mediation** may help you decide on things such as what happens to the home. A mediator won't tell you what to do, and won't make either of you feel that you are to blame for the break up. Instead, they will help you to talk to each other openly and honestly, in the hope that you can reach an agreement about things, such as:

- money
- who stays in the family home
- who looks after the children
- how you can continue to live together while one of you looks for another place.

Mediation is not a substitute for legal advice. Talk to a solicitor or specialist adviser to make sure you understand your rights and options before agreeing anything. It is not usually appropriate if you are experiencing domestic violence.

Some solicitors offer mediation services, as do Relate and National Family Mediation, or you can find a mediator through the College of Mediators (see page 45).

# Domestic violence and abuse

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If your partner has abused you, whether physically or not, you may be experiencing domestic violence or abuse. The law can protect you and help you to change your situation.

## What is domestic violence?

Domestic violence is when someone close to you (usually your spouse, partner, or ex-partner) behaves towards you in a way that causes physical, mental, or emotional injury. The abuse may not necessarily be physical violence.

It could be:

- sexual eg forcing you to participate in sexual acts you are uncomfortable with
- mental or emotional eg constantly humiliating you or isolating you from friends or family
- financial eg depriving you of the money you need to buy things the family needs.

Men can be victims of domestic violence as well as women. So can same sex partners.

## The role of the police

If you have been assaulted or are at immediate risk of assault, you can call the police on 999 and ask them to help you. They can:

- arrest the perpetrator, or detain them for questioning – this can be especially useful if you need them to be out of the way so you can leave home
- put you in touch with agencies that can help
- take you somewhere safe eg a refuge or the home of a friend or family member
- help you to get medical attention for any injuries
- help you to secure your home so the perpetrator cannot get back in.

If the police arrest your partner/spouse, they may only be gone for a short time. However, if they're charged, they may be either held in custody, or given bail only on condition that they do not go near you. If a criminal offence has been committed, they may be prosecuted and given a custodial sentence.

## Leaving in an emergency

If you don't feel safe in your home and have nowhere safe to go to, you can approach any local council and ask to make a homelessness application, or get a place in a refuge. You will also need to consider your finances after you leave.

## Safety checklist

**If you are being subjected to violence or threats, safety should be your primary concern.**

- Call 999 if you need help.
- Tell someone you trust about what has happened, and set up a password so you can let them know if you are in danger.
- Pack a bag of essentials and leave it somewhere safe for example with a friend or neighbour you trust.
- Teach your children to dial 999 in an emergency.
- Arrange somewhere you can stay in an emergency.
- If you are attacked, or think you may be, try to get to a safe room with a telephone and an exit. Avoid kitchens and other rooms where there are items that could be used as weapons.
- Go to hospital if you have been injured so there is a report of the injury and keep any other evidence of the abuse eg any threatening letters or text messages.
- Keep the essentials with you at all times:
  - cash and cash cards
  - mobile phone

- car keys
- address book – be sure to include numbers for domestic violence support agencies, schools, solicitors, social workers, your GP and the local police station.

If you have left home because of domestic violence, you may want to:

- tell people what's happened, and ask them not to give your new address or telephone number to the perpetrator.
- Change your mobile phone number.
- Avoid places where the perpetrator might expect to find you.
- If you have to go to a place where you think the perpetrator might find you, go with someone else if possible, or let someone know where you are going. Choose a route where there will be other people.
- Change your routines as much as you can, and reschedule any regular appointments.
- Avoid using joint bank accounts.
- Make sure your address does not appear on any court papers. Your solicitor, or a refuge worker, will be able to give you further advice on this.
- If you need to phone the perpetrator, or anyone who might give her/him your number, dial 141 before you call to ensure your number is kept secret.
- Tell your children not to tell the perpetrator, or anyone else, where you are staying.

## **Homelessness application**

If you have left your home because of domestic violence, you can approach any local council for assistance. The council should consider you to be homeless and may consider you to have a priority need for accommodation if you are not safe in your current home. It should normally provide you with emergency housing while it makes further inquiries into your situation, and may have a duty to rehouse you.

See Shelter's guide *Homeless? Read this* for more information about the council's duties.

Sometimes a council may give you the option of helping you to return to your former home, exclude your partner, and make your home safe. However, it cannot make you do this if you are still at risk of violence there. If the council won't take a homelessness application, won't provide emergency housing, or tries to make you go somewhere that you feel is unsafe, contact Shelter or the National Domestic Violence Helpline immediately (see pages 44–45 for details).

## **Refuges**

Refuges provide temporary housing for people fleeing domestic violence. You won't have to have left your partner permanently and you don't have to have children. You can apply for a place in a refuge yourself, or the council, police, or a specialist organisation may be able to arrange a place for you. Refuge places are limited, and you may have to go to another area.

Some refuges are shared houses, while others offer self-contained apartments. You will usually have your own room, but if you have children you may have to share the room with them. You will have to pay rent but may be entitled to housing benefit (see page 22). Refuge staff can give you advice about claiming benefits and finding a more permanent place to live.

There are very few refuges for men who have experienced domestic violence (see page 45).

## **Finances**

Many people are reluctant to leave a violent relationship because they are worried that they won't be able to support themselves financially. However, you may be able to apply for help with your housing costs and living expenses, such as:

- benefits or tax credits
- a crisis loan to help you meet emergency expenses
- maintenance payments from your ex-partner if you have children.

You may be able to claim housing benefit for two homes if you have to move out temporarily because of violence or threats. This can last for up to a year. You can apply for benefits at a Jobcentre Plus or at a Department for Work and Pensions office (see pages 45–46).

## Staying in the home

You don't have to lose your home if you have experienced domestic violence. You have done nothing wrong and you may want to stay close to friends, family, a local job, or local services. You'll probably also want to minimise upheaval if you have children.

**Think carefully** when making any decisions. Always put safety first. There are things you can do to legally exclude a perpetrator of domestic violence from your home, and to make your home safer, but these cannot totally guarantee your safety.

You may want to call the police, in the first instance (see page 11). This may only get the perpetrator out of the way for a short time, but it may be enough time for you to put some security measures in place to keep him/her out. You can change the locks, but you need to be aware that this will not necessarily stop the perpetrator getting in, and that you may be illegally evicting her/him if s/he has rights to live in the home.

In some circumstances you may be able to apply for an occupation order to give you rights to live in the home and/or exclude your partner (see page 18). If you are renting and are joint tenants, you could also consider giving notice and asking the landlord to give you sole tenancy. Get advice from a Shelter advice service or citizens advice bureau (see pages 44–45) before doing this, to make sure you don't end up losing your tenancy altogether.

When your partner has left, you may want to improve security in your home. This could include:

- fitting reinforced doors and/or window bars
- getting an alarm installed
- having a 'safe room' where you can take refuge if your attacker gets in – ideally this room should have a phone in it, and an exit.

If you can't afford these measures, contact your local council to find out whether it has a **sanctuary scheme** to help victims of domestic violence remain in their homes.

## Taking legal action

As well as occupation orders there are various other court orders and injunctions that you can apply for to increase your safety. The most common of these are **non-molestation orders**. These ban your partner from assaulting, harassing, or threatening you. You can also seek damages for any injury, anxiety, or financial loss you have suffered as a result of the violence.

You will need help from a solicitor if you want to take legal action – see page 4. If your partner has been prosecuted for a criminal offence, you may be able to get compensation from the Criminal Injuries Compensation Authority (see page 46).

## Home rights

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Whether you decide to stay in the home will depend partly on whether you have 'home rights'. This is a legal term that generally means that you can live in your home as if you were the owner or tenant. Your rights differ according to if you are a joint or sole owner or tenant, and what your relationship status is.

### Sole or joint tenant/owners

If you are a sole or joint tenant or sole or joint owner, you have rights to the home. These will be set out in the deeds to your property or in your tenancy agreement. If you are the sole owner but live with a spouse or civil partner, they have home rights that are largely the same as if they were a joint tenant or owner.

### Married couples/civil partners

If you are the spouse/civil partner of the owner or tenant, you have home rights.

## **Cohabitees**

If you are living with someone but are not a tenant or owner, you will need to apply for an occupation order (see page 18) to get home rights so that you can stay in the home. Home rights will only last as long as the occupation order does.

However, courts do not usually grant an occupation order in these circumstances. Exceptions might be made if you have children and you have no alternative accommodation, or if there is proof of domestic violence or abuse. If you want to establish long-term rights to the home, you will have to go to court to prove beneficial interest (see page 37).

## **The benefits of having home rights**

Home rights give you the right to:

- pay the rent or mortgage (that could prevent eviction or repossession)
- live in the home as though you were the tenant or owner.

Home rights usually end if one partner dies, or on divorce/ dissolution of a registered civil partnership. A court can extend home rights in either circumstance. If you are in this situation, talk to a specialist adviser or solicitor (see pages 4 and 44–46).

## **Home rights and tenancies**

If your spouse/civil partner has a sole secure, assured, or regulated tenancy and they leave, the tenancy will continue unless they give a valid notice to quit to the landlord. If you have home rights, the following options are available:

- if your partner wants to end the tenancy, you may be able to stop them (see page 23)
- if your landlord is trying to end your tenancy, you could apply to postpone court proceedings while you gather information to respond to the landlord's action.

If your partner's tenancy is an assured shorthold, the landlord can evict you by serving two months' notice, and does not need to have a reason for doing so. At the end of the notice, the landlord has to apply for a

court order. Usually, the court will award possession to the landlord and the judge will make a '28-day order'. If you don't leave at the end of the 28 days, the landlord has to apply for a bailiff's warrant. The bailiff's office will serve you with another notice giving an eviction date (usually two weeks ahead). You therefore have far less security if you are trying to continue an assured shorthold tenancy. Keep this in mind when deciding whether to apply for home rights.

## Home rights and ownership

If you've registered your home rights, the mortgage lender would have to advise you of any court action your partner might intend to take. In some cases, you can take part in legal proceedings to defend possession of your home by the mortgage lender.

## Registering home rights

If you are a spouse or civil partner (but are not the joint or sole owner/tenant), you may want to consider registering your home rights. Once registered, you will then be able to:

- prevent the owner from selling the home
- prevent the owner from getting loans against the home
- receive information if the home is being repossessed

If you register your home rights, your spouse or civil partner will be told, and can challenge your application. You can register your home rights on the Land Registry website at [www.landregistry.gov.uk](http://www.landregistry.gov.uk) or by calling **0844 892 1111**.

## Occupation orders

Occupation orders are a short-term measure that the courts can use to decide who has the right to return to, or stay in the home for the time being. Occupation orders usually last a specific length of time. The details of the order will depend on your individual circumstances.

## Why go to court

You might need to apply for an occupation order to:

- enforce existing rights eg if your ex-partner does not accept that you have rights to the home
- give new or extended rights eg if you don't have an automatic right to the home
- exclude someone who previously had rights eg keep one joint tenant/owner out
- restrict use of the property eg if you need to live in different parts of the home.

## Who can apply

Most people can apply for an occupation order, including:

- owners, tenants or people with beneficial interest (see page 37)
- the spouse/civil partner of an owner, tenant or someone with beneficial interest
- cohabitants of an owner, tenant or someone with beneficial interest.

The type of occupation order you can apply for depends on your rights, eg which category you fall into from the above list. People from the first two categories can apply for any type of occupation order. People in the last category can only apply for certain types of occupation order.

## What an occupation order can do

An occupation order could:

- allow you to stay in the home
- allow you to return to the home if you've left
- make sure that your ex-partner only uses a certain part of the home
- prevent your ex-partner from entering the home
- prevent your ex-partner from visiting the neighbourhood.

If you get an order preventing your partner/spouse from entering the home, it will override any home rights that s/he has. Their home rights will be suspended until the order states otherwise.

## **How to apply**

You can apply for an occupation order at either the magistrates court or the county court. You will need to fill in:

- an application form
- a form explaining why you want the order
- if you are eligible for help with legal costs – a ‘costs exemption’ form.

You should talk to a specialist adviser or solicitor before you apply, to make sure that you include all the relevant information to support your application. You may be eligible for free advice and/or representation – see page 4 for more information.

## **How long it will take**

This depends on your circumstances and how busy the court is, although you can ask the court to look at your case urgently. When you have filled in all the necessary forms you take them to court, where they will be checked and a date for the hearing will be set. The Courts Service website explains the procedures involved (see page 46).

## **How courts decide**

The courts decide whether to grant an occupation order based on:

- whether you are married or in a civil partnership
- whether you have children
- both of your incomes
- each of your housing needs, and whether either of you have any alternative places to stay
- whether it would have any impact on either person’s health, safety or wellbeing
- the actions and behaviour of both of you

- whether the property is rented or owner-occupied
- any other exceptional circumstances.

## Protecting legal interests

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If you want to stay in, or return to the home, you should think about protecting any interests you might have in it. You may have more rights than you think.

### **Why protect rights to return?**

If you are planning to leave the home, you should explore the consequences of leaving before you go. For example, if you are a sole tenant and you leave with no obvious intention to return, you are risking eviction. If you want to leave your home, but think you may want to return to it later, you should try to protect your interests in it.

You can protect the home by keeping up the rent or mortgage payments on it. Whether you will be able to make these payments depends on whether you are the tenant or owner, or whether you have home rights and can afford the rent or mortgage. If you don't have home rights and are not the tenant or owner, but want to stay in the home, you may want to see if you can stop your partner from ending the tenancy or selling the home (see page 23).

### **Paying the rent or mortgage**

You will be liable for the rent or mortgage payments if you are a tenant or an owner (either joint or sole) or if you are married to, or in a civil partnership with, the owner or tenant (ie you have home rights). If it is just your partner who is liable for the rent or mortgage (eg they are the sole tenant or owner and you are cohabiting), and they leave, you may want to try to establish the right to make rent or mortgage payments if you want to stay in the property.

If rent or mortgage payments are not kept up by whoever is liable to pay them and you get into arrears, you could lose your home.

## **Married couples/civil partners**

Even if you are not the owner or tenant, if you are married or in a civil partnership and you have home rights, you will have a right to pay the rent or mortgage. If your spouse or civil partner has built up rent arrears, however, or goes on to build up rent arrears in the future, you will not necessarily be held liable for these.

## **Owners or tenants**

If you are the owner or tenant, you are liable for the rent or mortgage payments. If you are a joint tenant or owner and the other joint tenant or owner leaves, you will be liable to make all of the payments.

## **Cohabitees who are not tenants or owners**

If you are not married or in a civil partnership and you are not an owner or tenant, then you have no right to pay the rent or mortgage.

However, if you want to stay in the property, you should try to ensure that arrears do not build up. You could apply for an occupation order, which will give you home rights for as long as the order lasts (see page 18). This will give you the right to pay the rent or mortgage. If you do become liable for the rent or mortgage, you can also apply for housing benefit or, if you're on income support or income-based jobseeker's allowance and you own your own home, you can apply for Support Mortgage Interest (see page 6) to help cover the costs. However, you will not necessarily be able to prevent your ex-partner from selling the property or giving notice to end the tenancy.

## **Help with housing costs**

If you decide to stay in the home and your partner leaves, you may be able to claim housing benefit to help you pay the rent. If you're on income support or income-based jobseeker's allowance and you own your own home, you may be able to claim Support Mortgage Interest (see page 6). There are other benefits that you might be able to claim to help with housing costs, such as pension credit, income support, or income-based jobseeker's allowance. For more information on these, visit [www.gov.uk/browse/benefits](http://www.gov.uk/browse/benefits) or ask at your local benefits office.

## **Preventing one person from selling or giving notice**

If your partner/spouse tries to sell your home, or give notice to the landlord, any rights you have could be put at risk. You may need to take urgent action to ensure this doesn't happen.

## **Stopping a partner/spouse from giving notice**

If one joint tenant gives a valid notice to your landlord, the tenancy is likely to end for both of you. If you want to keep your tenancy from ending, it is important to take action quickly to prevent this from happening. Once the correct notice has been given, it's very difficult to reverse.

## **Married couples/civil partners**

If you want to stay but you suspect that your spouse/civil partner is going to end the tenancy, it is essential that you let the landlord know immediately that you would like to stay.

Your landlord is not obliged to let you stay, but there are legal steps you can take to transfer the tenancy into your name only. This can include applying for an injunction to prevent your ex-partner from serving a notice to quit. The application can be made in various ways, including making an application when you apply for a divorce/dissolution of a civil partnership, or when it is made for the benefit of your children. Talk to a legal adviser as soon as possible if you need to do this (see pages 4 and 45–46).

## **Cohabiting non-tenants**

In most cases, if your ex-partner is the sole tenant and s/he leaves, the tenancy will come to an end.

However, this can be prevented if you as the non-tenant gets an occupation order (see page 18) before your ex-partner leaves. If you suspect your partner wants to end the tenancy and you'd like to stay, contact a Shelter advice service or citizens advice bureau immediately to check whether an occupation order is the best course of action (see pages 44–45). If the court grants you an occupation order, most types of tenancy will last as long as the order does. This would give

you enough time to apply to the courts for the tenancy to be transferred into your name (see page 34).

This course of action may only be worthwhile if you have a tenancy that gives you strong rights – such as an assured, secure or protected/regulated tenancy. If you're an assured shorthold tenant with a private landlord and you'd like to stay in your home, it may not be worth applying for the tenancy to be transferred through the courts. But you could talk to your landlord, explain the situation, and ask if they can grant a new tenancy in your name.

## **Stopping a sale**

If your spouse/partner is the sole owner and you split up, it is important to make sure that s/he doesn't sell the home without your agreement. If this happens, you are likely to lose any rights to the home you might have had.

Your partner cannot sell the home without your consent if you are the sole owner or a joint owner. The consent of all the property owners is required to sell the property, unless the courts order the sale.

Your partner may also try to give the property away, or use it to raise a loan or second mortgage. They may try to do this to stop you living in the home, or to prevent you from getting your share.

## **Married couples/civil partners**

If you think your spouse/civil partner may try to sell the home without your consent, there are ways you may be able to prevent this from happening. It is usually best to take action before your relationship legally ends so that any property settlement can be decided as part of the divorce/dissolution proceedings.

## **Registering home rights**

Check whether your home rights are registered before your marriage/civil partnership ends. This will prevent the home being sold, as it will show up when any potential buyers conduct searches. If your home rights are not registered then you will have no right to stay in the home if it's being sold or repossessed.

You can check whether your home rights are registered by visiting the Land Registry website and paying a small fee (see page 46). If you are a sole or joint owner, your ownership will be registered at the Land Registry. If you are a non-owner but have established a beneficial interest in your home, that interest should also be registered at the Land Registry (see page 46).

## **Restriction or notice**

If you are joint owners, you may want to protect your interests in the home by registering a restriction or notice on the Land Register. You can do this before starting divorce/dissolution proceedings, or even if you are not going to apply for a divorce/dissolution.

There are different kinds of restriction or notice, but their main function is to show up on property searches through the Land Registry. This alerts any potential buyer that there is a dispute over the property. You can register a restriction or notice using forms from the Land Registry website. There is a small fee for this service (see page 46).

## **Applying for a property adjustment order**

If you apply for a property adjustment order as part of divorce/dissolution proceedings, your application can be held together with the rest of the information on your property at the Land Registry.

It would be unlikely that a sale would go through if there were a dispute of this kind over the property.

For more information about property adjustment orders see page 41. If you want to apply for one, contact a family law solicitor (see pages 4 and 45–46).

## **Ordering a sale**

If you cannot agree on whether the home should be sold, you may be able to apply for an order for sale. This is normally possible if:

- you are joint legal owners, or
- you are not the owner but have established a beneficial interest (see page 37).

An order for sale will declare any beneficial interest and can order or delay the sale of a home. Engaged couples may be able to use this option as well as married couples and civil partners. You will need advice from a solicitor before taking action. Applications are made via the county court (see pages 4 and 45–46).

## **Applying for an injunction**

An injunction is a court order that stops something happening and might be part of divorce/dissolution proceedings. Courts will only grant injunctions if it is clear that your partner is deliberately trying to prevent you from having any share of the property. Again, if you want to apply for an injunction, you should seek advice from a family law solicitor.

## **Cohabitees**

If you're cohabiting and are neither a joint or sole owner, you will have to rely on establishing a beneficial interest to prevent the remortgage or sale of the home (see page 37).

Even if you have established a beneficial interest, your home could still be sold if your partner applies for an 'order for sale' (see below). The court may grant an order if it believes that you would receive a fair share of a sale based on your beneficial interest.

If you have children, and you are caring for them, it may be possible to prevent the sale of the property if you can show that it is for the good of the children.

## **Ordering a sale**

If you are joint owners and you can't agree on whether the home should be sold, you can apply for an order for sale from the courts. You can also do this if you are the non-owner but have established a beneficial interest.

An order for sale will declare any beneficial interest, and can allow or postpone the sale of a home.

Many different couples can use this option, but the fact that you are not married or not in a civil partnership does make the process more complicated and costly. You will need to get advice from a solicitor before taking action (see pages 4 and 45–46).

## **Restriction or notice**

If you are joint legal owners, you may want to register a restriction or notice on the Land Register to protect your interests in the home.

There are different kinds of restriction or notice, but their main function is to show up on property searches through the Land Registry, alerting potential buyers that there is a dispute over ownership of the property. You can register a restriction or notice by completing forms on the Land Registry website and paying a small fee.

## **Ex-partner giving the home away**

If your home is given away, or sold for an unreasonably small amount of money, you shouldn't lose your home rights or beneficial interest, even if these rights aren't registered. This means that you shouldn't be forced out of your home after it's given away. If this has happened to you, you will need to talk to a legal adviser immediately (see pages 4 and 45–46).

## **Long-term solutions for tenants**

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Long-term decisions about your home are likely to depend on whose name the tenancy is in, your finances and whether you have children. Every situation is different and the law is complicated. It is always best to get legal advice before agreeing to anything.

## **Married couples/civil partners**

A range of options is available – even if the tenancy is in your spouse or partner's name.

## **Council/housing association tenancies**

In council or housing association properties, your options depend on whose name the tenancy is in, and whether you are divorcing or dissolving your civil partnership.

## **If you are the sole tenant**

- You have the right to stay in the home but your spouse/civil partner may be able to establish rights to the property as well.

- In most cases, if you leave the home, your tenancy will end automatically.
- If you decide that your spouse/partner should stay, it may be possible for the tenancy to be transferred into their name (see page 34).
- If you want to end the tenancy, you can give notice to your landlord. This notice is often called a 'notice to quit', and has to be made correctly to be valid.

The courts sometimes have the power to transfer a tenancy from the sole tenant to the non-tenant. This can only happen if you are divorcing or dissolving your civil partnership, or it is in the best interests of any children you have. The court may order compensation to be paid to the person who leaves if s/he has lost out financially because of the transfer.

### **If you have a joint tenancy**

- You have equal rights to stay in your home.
- If one of you gives the correct notice to your landlord, the tenancy will automatically end for both of you. If you want to prevent this from happening, see page 18.
- If you can agree who should stay, one tenant may be able to assign the tenancy to the other. But not all tenancies can be assigned and the correct procedure must be followed. Get help from a Shelter advice service or citizens advice bureau (see pages 44–45).
- If you can't agree who stays, you will have to go to court. The court's decision will depend on whether you are divorcing/dissolving a civil partnership, and whether you have children.
- If either of you gives notice to end the tenancy by giving four weeks' notice, then the landlord will look into whether the property will be too big or too small for the person staying. Get advice if you are in this situation.
- If there are children, and the parent with children leaves, the tenancy still has to be ended. The parent with children will usually be offered other accommodation.

## **If you are divorcing/dissolving a civil partnership**

A decision on the long-term rights you have to your home can be made as part of divorce/dissolution proceedings. This could involve the courts deciding to transfer the tenancy from a joint to a sole tenancy in your or your ex-partner's name. In some cases, the court will order the partner remaining in the home to pay compensation to the partner who leaves, if they think that person has lost out financially because of the transfer.

## **If you are not divorcing/dissolving a civil partnership**

If you're not legally ending your relationship, you will have fewer options because the courts have more power under matrimonial and family law (eg if you're divorcing or dissolving your partnership) than they do under housing law.

If you can agree who stays in the property, it could be assigned to this person (transferred into their name). Most tenancies can only be assigned if it says so in your tenancy agreement – check this, and get advice from a Shelter advice service or citizens advice bureau (see pages 44–45).

If one of you wants to leave the property, you can serve a valid notice to the landlord. However, this will normally end the tenancy for both joint tenants. If one partner simply moves out, then the tenancy will continue for the remaining tenant, although s/he will have to continue paying all the rent to avoid being evicted.

If you want to stay in the home without your ex-partner, there are few long-term options that do not involve going to court. In the short-term, you can use an occupation order (see page 18). You should get legal advice about your long-term options (see pages 4 and 45–46).

## **Non-tenants**

If the tenancy is not in your name but you are married or in a registered civil partnership with the tenant, you could still have rights to the home:

- if your ex-partner agrees to it, s/he may be able to assign the tenancy to you if your tenancy agreement says this is possible

- if your ex-partner gives a valid notice to the landlord, or you think they will do so, get advice. Once a valid notice has been served, it is very difficult to obtain any rights to the home.

If you and your partner can't agree who should live in the home, the courts can decide for you. The transfer of a tenancy has to happen at the same time as divorce/dissolution of a civil partnership. It is crucial that you do not formally end your relationship until the tenancy has been transferred, as this would end your rights to the home.

## Private tenants

If you rent privately, your options will depend on what type of tenancy you have.

Most private tenants have an **assured shorthold tenancy**, which gives you very limited rights. Landlords don't need a legal reason to evict assured shorthold tenants, so spending time and money trying to hold on to the tenancy may not be worthwhile. However, you could ask the landlord to set up a new tenancy only in your name – they are more likely to agree to this if you have a history of paying rent on time.

However, if you have an **assured tenancy** or a **regulated/protected tenancy** you have much stronger rights, and it's almost always worth taking action to protect them. If your tenancy began before 15 January 1989, you probably have one of these types of tenancy and should get advice before you agree to anything. Don't risk signing away important rights by agreeing to changes in your tenancy.

## Married couples with children

Regardless of whether you are planning to divorce/dissolve your civil partnership, a tenancy can be transferred from one spouse or civil partner to the other if:

- the court believes it's in the best interests of the children
- the type of tenancy you have can be assigned
- the landlord agrees to the transfer.

The court will not consider details that relate specifically to the parents, for example, how long they have been together. You will need to speak

to an adviser to transfer a tenancy in this way. You will probably also need the help of a family law solicitor.

### **If a sole tenant leaves without ending the tenancy**

If your spouse/civil partner is the sole tenant, and they leave without giving notice, you are likely to be able to stay in the home for as long as your marriage or civil partnership lasts. You will need to pay the whole of the rent or you could risk being evicted. With most types of tenancy, if you divorce/dissolve your civil partnership, your rights to live in the property will end as well. Talk to a legal adviser if you are in this situation.

## **Cohabitees**

If you are not married or in a civil partnership, your long-term rights depend on whether your name is on the tenancy agreement. If it's not, you will have no automatic rights to the home, but you may still be able to get the tenancy transferred into your name.

### **If you are the sole tenant**

- You have the right to stay in the home, but your partner could try to establish rights to the property as well.
- In most cases, if you leave the home, your tenancy will end automatically.
- If you decide that the non-tenant should stay, it may be possible for the tenancy to be transferred into their name. This can only happen with certain types of tenancy – check your tenancy agreement and/or ask your landlord or legal adviser.
- If you want to end the tenancy, you can give a 'notice to quit' to your landlord. If correct notice is given, it will automatically end the tenancy for both of you.
- If you go to court, the court can transfer the tenancy from the sole tenant to the non-tenant. In some cases, the court will order compensation to be paid to the partner who leaves if they believe that person has lost out financially.

## **If you are a joint tenant**

- You and your ex-partner have equal rights to stay in your home.
- If one of you gives the correct notice to end the tenancy, it will normally end for both of you. If the other person wants to stay s/he must take action to stop this from happening (see page 23).
- If you both agree, one tenant may be able to assign the tenancy to the other. This is only worth doing if you have a tenancy with strong rights (eg a secure, assured or regulated tenancy). Not all tenancies can be assigned – check what your tenancy agreement says or get advice from a Shelter advice service or citizens advice bureau (see pages 44–45).
- If one of you wants to leave, s/he can give the landlord a valid notice, although this will end the tenancy for both joint tenants.
- If one partner leaves without giving notice, then the tenancy will continue for the remaining tenant. However, the remaining tenant will have to continue paying all the rent to prevent the landlord taking action to evict them.
- If you can't agree who will stay, then you will have to go to court. The decisions the court can make will depend on your circumstances, for example, your finances, whether you have alternative accommodation, and whether you have children.

If you decide to go to court, the court may transfer the tenancy from a joint to a sole tenancy in either person's name. The court may order compensation to be paid to the person who leaves if s/he has lost out financially.

## **If you are the non-tenant**

- You don't have an automatic right to stay if your ex-partner wants you to leave.
- If s/he gives your landlord a notice to quit, the tenancy will end for both you. The only exception to this is if the tenancy is regulated (protected), which is quite rare. If you think your partner is going to give notice and you want to stay, contact an adviser immediately.

If the tenant leaves or gives notice, the tenancy will usually come to an end and you will have to leave. However, in most cases your landlord will have to follow the correct legal procedure and get a court order for possession before you have to leave.

## **Cohabitees with children**

Tenancies can be transferred from one partner to the other if:

- the court decides it's for the good of the children
- that type of tenancy can be assigned
- the landlord agrees to the transfer

The court won't consider details that relate specifically to the parents, such as how long they have been together. You will need legal advice to transfer a tenancy in this way (see pages 4 and 45–46).

## **Going to court**

Going to court can be time-consuming and costly. If you can, it's always best to try to negotiate with your partner to reach a solution first. If you don't feel that you can talk alone without disagreeing, you could try mediation (see page 10).

This section gives an overview of the sorts of decision the court could make. But bear in mind that courts' decisions are based on individual circumstances, so legal advice is important ((see pages 4 and 45–46).

## **Is it worth it?**

Taking court action can be expensive, slow and stressful. Usually, only tenancies that give you strong rights are worth fighting for in court:

- assured tenancies
- secure tenancies
- regulated tenancies (sometimes called 'protected' tenancies or 'Rent Act' tenancies).

If you're uncertain about what type of tenancy you have, ask your adviser to check for you or visit [shelter.org.uk/tenancychecker](https://shelter.org.uk/tenancychecker)

If you have an assured shorthold tenancy with a private landlord it may not be worth going to court, because your tenancy provides very limited protection from eviction. Assured shorthold tenancies with housing associations are often more valuable – especially starter tenancies, which automatically become assured tenancies if there are no problems during the trial period.

## What the court can do

What the court can do depends on:

- whether you are married, in a civil partnership or cohabiting
- if you are married/civil partners, whether you are legally ending your relationship or not
- whether you have children
- your personal circumstances, such as finances and whether you have anywhere else to live.

In the **short term**, courts can issue occupation orders. These normally only last a short time, but in some circumstances (eg if you're married, in a civil partnership or a joint tenant) they can last longer (see page 18).

In the **long term**, courts can:

- transfer the tenancy from one tenant to the other
- transfer the tenancy from the sole tenant to the non-tenant
- declare that one partner lives in the home for a certain time
- say that the partner/spouse who stays in the home should pay compensation to the other if, for example, the other partner has suffered financial loss through losing the tenancy.

There may be costs involved – see page 4 for more information.

## Transferring tenancies

If you are a joint tenant, or if your partner is the sole tenant, you may be able to have the tenancy transferred into your name only.

## **If you both agree**

If you and your ex-partner have agreed who is going to stay in the property in the long term, you may need to change the name on the tenancy agreement. If your partner is the sole tenant and they leave, the landlord can evict you unless you change the tenancy into your name.

Many types of tenancy can be transferred:

- by assignment, or
- by asking the landlord to give a new tenancy to the partner who is staying, and then surrendering the original tenancy.

Not all tenancies can be assigned, and some can only be assigned to certain people. Check what your tenancy agreement says.

Also bear in mind that landlords are not obliged to grant a new sole tenancy to the remaining partner, so you should not end the original tenancy until you get a written agreement from the landlord that a new tenancy will be created for the person staying on.

It is worth remembering that if you are granted a new sole tenancy, you will have to cover all the rent and other running costs yourself. Draw up a budget to make sure the costs are affordable, and talk to your solicitor about benefits and maintenance before you commit yourself.

## **If you don't agree**

If you can't agree who the tenancy should be transferred to, you will have to ask the courts to decide. This can be a long and difficult procedure and you will probably need a solicitor. The decision a court will make will depend on whether you are married, in a civil partnership, or cohabiting, and whether you have children. If you need a decision to be made quickly, you may be able to apply for an occupation order (see page 18).

## **Long-term solutions for homeowners**

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Sorting out long-term rights in an owner-occupied property when you're splitting up is complicated. Every situation is different so you

are likely to need the help of a solicitor when making final decisions. The options you have will probably depend on:

- the rights each of you has to the home
- personal circumstances, such as whether you have children
- finances.

## Married couples/civil partners

There are lots of possible outcomes if you're married or in a civil partnership – even if you're not the legal owner of the property yourself.

If you are the **sole legal owner** you have the right to stay in the home. However, your spouse or civil partner may be able to establish rights to the property by establishing a beneficial interest and/or home rights. Ultimately, the court could even decide to transfer the property from the owner to the non-owner.

**Joint legal owners** have equal rights to stay in the home. If you feel you should not have equal rights to the property (eg because you believe you've contributed more towards the home) you can apply to establish a beneficial interest to try to alter your share of the property. However, if you've been together for a long time, then it will nearly always work out 50:50. Sorting things out without going to court could save you a lot of money.

If you are **divorcing/dissolving a civil partnership**, a decision on long-term rights to your home can be made as part of your divorce/dissolution proceedings. There is little point going to court to establish rights to the home beforehand, because decisions made as part of divorce/dissolution proceedings will overrule any previous decisions.

If you're **not going to divorce/dissolve your civil partnership**, you have fewer legal options. This is because the courts have more power under matrimonial and family law than they do under housing law.

If you are **not the legal owner** but have made contributions towards the home (eg making mortgage payments, paying for renovation, paying bills) you can apply to establish a beneficial interest (see page 37). This could give you a legal interest in the property, and/or a financial stake.

If you have **children**, property can be transferred from one person to the other if the court decides it's in the children's best interest. This can happen whether you are planning to divorce/dissolve your civil partnership or not. You will need to speak to a specialist adviser or family law solicitor if you want to take this course of action (see pages 4 and 45–46).

## Cohabitees

If you are not married or in a civil partnership, then your long-term rights depend firstly on whether you have a legal interest in the home. If you don't, you will have no automatic rights to the home, but you can still ask the court to recognise any contributions you've made.

If you are the **sole legal owner**, you have a right to stay in the home. However, your partner could apply to establish a beneficial interest if they feel they are entitled to a share of the property (see below). If the home is being sold and your partner has applied for their beneficial interest to be recognised, legal ownership will not necessarily affect who is entitled to money from the sale.

If you are **joint legal owners**, you have equal rights to stay in your home. If you feel you shouldn't have equal rights (eg because you feel you've contributed more than your partner) you can apply for beneficial interest to try to alter your shares of the property.

If you are **not the legal owner** but have made contributions to the home, you can apply to establish a beneficial interest, which will take these contributions into account (see below).

If you have **children**, property can be transferred from one partner to the other if the court decides it would be for the good of any children involved. Speak to a specialist adviser or solicitor if you want to pursue this course of action (see pages 4 and 45–46).

## Beneficial interest

Claiming a beneficial interest is a way of getting the court to formally recognise contributions you have made towards the home. It gives you rights to live in the home and a share of its value if it is sold. If you are cohabiting and your partner is the sole owner, it is the only way to establish long-term rights to the home.

## What beneficial interest means

Legal ownership can be overruled by beneficial interest, and does not necessarily affect who is entitled to what share when a relationship ends. Beneficial interest will take into account any contributions both partners have made towards the home, and the intentions of both partners when the home was purchased.

Establishing a beneficial interest could allow you to:

- get the right to live in the home
- prevent your ex-partner from selling the home
- prevent your ex-partner from using the home to get a loan
- get a share of the proceeds if the home is sold. Your share will depend on the terms of your beneficial interest.

## Who should apply

Establishing a beneficial interest is particularly useful if:

- you have no automatic rights to the home (eg you're not a legal owner, and/or you're not the spouse/civil partner of the owner)
- you're joint legal owners, but you feel you have more rights to the property. In this case you can apply to establish a beneficial interest to alter the your share of the property.

## Couples who are divorcing/dissolving a civil partnership

A decision on the long-term rights you might have to your home can be made as part of your divorce/dissolution proceedings. There is little point in going to court to establish beneficial interest, as the divorce/dissolution proceedings may override previous decisions.

## How to establish beneficial interest

The simplest way to prove beneficial interest is if you had a written or signed declaration or formal trust deed with your partner, indicating each other's intentions with regard to finances. It's helpful to arrange a deed of this kind when you buy a property. However, you can also apply to establish a beneficial interest at any point in your relationship

if you are worried that your contributions towards the home might not be recognised.

If you didn't have a declaration or deed when you bought your home, and you cannot agree, you will have to go to court. The court will look for common understanding between you and your ex-partner about what your original intentions were. If this doesn't exist, it will look at financial contributions. Only payments that were not intended as a gift will be taken into account.

### **Alternatives to beneficial interest**

If your partner/spouse is the sole owner, but you believe you are owed a share in it, there are two options other than establishing a beneficial interest:

- proving you have a contractual or irrevocable licence
- establishing rights to estoppel.

These options may be appropriate if you think you have been misled by your partner/spouse into believing you would get interest in the property. This may include giving up your job, or your own home, to live with your partner. Both these options are difficult to prove, and you will need help from a specialist adviser or solicitor (see page 4).

### **Going to court**

People go to court when they can't agree on a solution. It can be time-consuming and costly, so problems are usually best settled out of court, where possible. If you can (it isn't always possible) try to negotiate with your partner before you start court action. If the two of you can't talk alone without disagreeing, you could try mediation (see page 10).

Going to court can be very expensive, unless you are eligible for public funding (formerly known as legal aid – check whether you're eligible at [www.gov.uk/check-legal-aid](http://www.gov.uk/check-legal-aid)). It's very important to consult a solicitor beforehand to prepare your case and be sure that you understand your rights and options. A solicitor should also be able to give you an idea of costs (see pages 4 and 45–46).

## **What the court can do**

The court's options will depend on:

- whether you are married, in a civil partnership or cohabiting
- whether you are divorcing or dissolving your civil partnership
- whether you have children.

Depending on your circumstances, the court can:

- adjust legal ownership and beneficial interest (see page 37)
- make orders about paying the mortgage
- order a property to be sold, or prevent the property from being sold.

The court cannot change the name on a mortgage – you have to request this from the mortgage lender.

## **Couples who are divorcing/dissolving a civil partnership**

Courts can transfer ownership of property from the existing sole owner to the non-owning partner on a long-term basis as part of divorce/dissolution proceedings. If the property is owned jointly, it can be transferred into just one person's name.

If a transfer is not requested as part of divorce/dissolution proceedings, it is much harder to do so later on. It is normally only possible if it would be in the best interests of your children.

## **Couples who are not divorcing/dissolving a civil partnership**

If you are cohabiting or are not intending to legally end your relationship, you can only transfer a property through the courts if it would be for the benefit of your children.

## **Court costs and procedure**

You can check whether you're eligible for help with the costs involved using the Legal Aid Checker at [www.gov.uk/check-legal-aid](http://www.gov.uk/check-legal-aid). Your solicitor should be able to give you an idea as to how long all the legal issues will take. After filling in the necessary forms, take them to court where they will be checked and you will be given a date for your hearing. The date will depend on how busy the court is. The Courts

Service website has more information about the procedures involved (see [www.justice.gov.uk/about/hmcts](http://www.justice.gov.uk/about/hmcts)).

## Settling disagreements

Married couples and civil partners have stronger legal rights when settling disputes over property. However, if you are cohabiting, there are still options for claiming your fair share of the home.

### Couples who are divorcing/dissolving a civil partnership

A decision on the long-term rights you have can be made as part of your divorce/dissolution proceedings. There is little point going to court to establish your rights to the home beforehand as decisions made as part of these proceedings will overrule any earlier decisions.

The housing-related orders the court makes as part of divorce/dissolution proceedings are called **property adjustment orders**. These orders can also be issued as part of judicial separation, separation of civil partners, and an annulment of marriage/civil partnership.

### Types of property adjustment orders

The most common property adjustment orders the court can make are:

- transferring the home from one person to the other
- selling the home and splitting the proceeds
- delaying the sale of a home
- formalising an agreement to sell the home, if this is what you have decided – these are known as **consent orders**
- declaring that you and your ex-partner no longer have financial obligations towards each other – these are **clean break orders**.

Getting a property adjustment order can be complicated. Once issued, they cannot usually be changed, so it's important to speak to a specialist adviser or solicitor before you take action (see pages 4 and 45–46).

The courts can **transfer property** belonging to one or both spouses/civil partners on a long-term basis. This will change the legal ownership of the property, but the name(s) on the mortgage can only be changed if

the mortgage lender agrees to it. They may refuse if they believe the person who is staying will not be able to afford repayments alone.

The court can order the sale of a home and establish each partner's share of the financial proceeds. The court will only do this if:

- no one would be made homeless as a result
- the marriage or civil partnership has been short and there are no children.

A court is unlikely to order the sale of a home if it's in negative equity – the property is worth less than the outstanding mortgage on it.

If you are not divorcing/dissolving your relationship, you may still be able to get an order for sale through the courts.

The court can delay the sale of the home until a future date eg until the person staying in the home remarries or the youngest child reaches a certain age.

One partner can live in the home until it's sold. The court will specify who will receive what portion of the financial proceeds when the home is sold.

As well as deciding what will happen to the property, the court can also end any financial obligations the partners have towards each other through a **clean break order**. These orders are only likely to be made if:

- you do not have children together
- the marriage/civil partnership was short
- you are both working.

If you have been able to agree to sell the home, this agreement can be formalised in court via a **consent order**. You will normally need help from a solicitor to do this (see pages 4 and 45–46).

## Applying for a property adjustment order

You can apply for a property adjustment order:

- before, or after a decree absolute
- at any time after a divorce/dissolution until you remarry/enter into a new civil partnership.

If you're asking for a divorce/dissolution, you will need to say at the time that you want the property to be transferred into your name. You will then be given an application to complete. If you decide after your divorce/dissolution that you want the property transferred into your name, you will need permission from the court before you make an application.

## **How the court decides whether or not to make an order**

The court will make its decision in the interests of any child(ren) that you and/or your partner have. It will also take into account:

- whether either of you would become homeless and in priority need as a result (see Shelter's free guide *Homeless? Read this*)
- your financial circumstances and income (or potential income)
- the length of the relationship.

## **Couples who are not divorcing/dissolving a civil partnership**

The courts have more power under matrimonial and family law (ie if you're divorcing/dissolving your relationship) than they do under housing law. So if you're not planning to legally end your relationship, you will have fewer legal options.

If you've made contributions towards the home (eg paying the bills or mortgage), you can apply to establish a beneficial interest (see page 37). If you establish a beneficial interest, you may be able to ask the court to order or prevent the sale of the home (see page 23). If you have children, the home can be transferred from one parent to the other if it would be in the best interests of the children.

## **Cohabitees**

If you're cohabiting, there are fewer legal remedies when settling property disputes. If you feel that you've made contributions towards the home (eg by paying the mortgage or bills), you can apply to establish a beneficial interest (see page 37). This has to be done via the courts and will require a solicitor (see pages 4 and 45–46).

If you have children and are caring for them, the courts can transfer the property into your name if it would be in the best interests of the children.

## Contact Shelter

You can call our free housing advice helpline. Calls to Shelter and Shelter Scotland are free from UK landlines and main mobile networks. We can provide minicom or interpreting services.

The cost of calling Shelter Cymru will depend on your landline and mobile provider and your contract with them.

### Shelter

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 **0808 800 4444**

**Mondays–Fridays: 8am–8pm**  
**Weekends: 8am–5pm**

### Shelter Cymru

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 **0845 075 5005**

**Mondays–Fridays: 9am–5pm**

### Shelter Scotland

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 **0808 800 4444**

**Mondays–Fridays: 9am–5pm**

For online information about your housing rights and details of local advice services, visit:

- [shelter.org.uk/advice](http://shelter.org.uk/advice)
- [sheltercymru.org.uk](http://sheltercymru.org.uk)
- [shelterscotland.org](http://shelterscotland.org)

## Useful organisations

### Housing and general advice

#### Advice UK

☎ 0300 777 0107  
mail@adviceuk.co.uk  
www.adviceuk.org.uk

#### Citizens Advice

☎ 08454 04 05 06  
www.citizensadvice.org.uk

#### Housing Rights Service

(Northern Ireland)  
☎ 028 9024 5640  
www.housingadviceni.org

### Domestic violence

#### Broken Rainbow

For lesbian, gay, bisexual,  
and transgender people  
☎ 0300 999 5428  
www.broken-rainbow.org.uk

#### DYN Project

Listening, advice, safety and  
advocacy for men in Wales  
☎ 0808 801 0321  
www.dynwales.org

#### Mankind UK

For men experiencing  
domestic violence  
☎ 01823 334244  
www.mankind.org.uk

#### Men's Advice Line

☎ 0808 801 0327  
www.mensadvice.org.uk

### National Domestic Violence Helpline

☎ 0808 2000 247  
www.nationaldomesticviolencehelpline.org.uk

#### Refuge

☎ 0808 2000 247  
refuge.org.uk

#### Welsh Women's Aid

☎ 0808 80 10 800  
www.welshwomensaid.org

#### women's aid

☎ 0808 2000 247  
www.womensaid.org.uk

### Mediation and relationship counselling

#### College of Mediators

☎ 0845 65 85 258  
www.collegeofmediators.co.uk

#### National Family Mediation

☎ 0300 4000 636  
www.nfm.org.uk

#### Relate

☎ 0300 100 1234  
www.relate.org.uk

### Solicitors and legal help

#### Civil Legal Advice

☎ 0845 345 4345  
https://claonlineadvice.justice.gov.uk

### **Law Centres Network**

info@lawcentres.org.uk  
www.lawcentres.org.uk

### **Law Society**

www.lawsociety.org.uk/find-a-solicitor

### **Government websites**

#### **Criminal Injuries Compensation Authority**

☎ 0300 003 3601  
www.justice.gov.uk/victims-and-witnesses/cica

#### **Department for Work and Pensions**

www.dwp.gov.uk

#### **Gov.uk**

www.gov.uk  
Find a legal adviser:  
www.gov.uk/find-a-legal-adviser  
Eligibility for legal aid:  
www.gov.uk/check-legal-aid

#### **HM Courts Service**

www.justice.gov.uk/about/hmcts

#### **Jobcentre Plus**

To make a claim for benefits:  
☎ 0800 055 6688  
www.gov.uk/browse/benefits

To apply for a NI number:

☎ 0300 200 3505  
www.gov.uk/national-insurance

### **Land Registry**

☎ 0844 892 1111  
www.landregistry.gov.uk

### **Ministry of Justice**

www.justice.gov.uk

### **Dealing with debt**

#### **Debt Advice Foundation**

☎ 0800 043 4050  
www.debtadvicefoundation.org

#### **National Debtline**

☎ 0808 808 4000  
www.nationaldebtline.co.uk

#### **StepChange**

☎ 0800 138 1111  
www.stepchange.org

#### **The Money Advice Service**

☎ 0300 500 5000  
www.moneyadviceservice.org.uk



We help over a million people a year struggling with bad housing or homelessness – and we campaign to prevent it in the first place.

We're here so no-one has to fight bad housing or homelessness on their own.

Please support us at [shelter.org.uk](http://shelter.org.uk)

**Until there's a home for everyone**

88 Old Street  
London  
EC1V 9HU  
Tel: 0300 330 1234  
**shelter.org.uk**

Registered charity in England and Wales (263710)  
and in Scotland (SC002327). SH076  
Last update: July 2013

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