

# Housing and Relationship Breakdown



This leaflet includes basic guidance only. Every situation is different and it is important that you seek individual advice tailored to your personal circumstances. Our Housing Options Team can give free, confidential advice and can be contacted on (01494) 732013

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## Introduction

This guide looks at the rights of couples whose relationship has broken down. It covers your short- term and long- term rights to remain in the home and explains what options might be available to you. The guide also explains what your options are if your partner is violent or threatens you or your children with violence.

Housing issues can be very complex and we strongly recommended that you should seek advice from your local Citizen's Advice Bureau, a solicitor specialising in family law or Chiltern District Council's Housing Options Team.

## What are my rights?

If your relationship breaks down you may have rights to remain in your own home even if you are not the tenant or the owner. You may even be able to get the property transferred into your name. What rights you have will depend upon the relationship you were in, the type of occupancy you and your partner had and your personal circumstances.

# If you rent your home

## If both your names are on the tenancy

If you rent a property and both you and your partner have signed the tenancy agreement then you will be joint tenants. If you have not signed an agreement but entered into a verbal contract with your landlord at the same time as your partner you are likely to be a joint tenant but you need to take expert advice.

### Your rights as a joint tenant are:

- you have the right to remain in the property and can only be made to leave by a court order
- you can only make your partner leave by getting a court order
- You are jointly and individually responsible for paying the rent with your partner
- you are liable for the rent until the tenancy is ended formally, even if you leave the property
- if you remain in the property, or if you leave the property with your partner left in the property the joint tenancy continues until formally ended.

You can ask the court to make an 'occupation order' if your partner tries to make you leave. This will state who should live in the property.

If your partner ends the tenancy by giving legal notice (which he/she is entitled to do) then this will end the tenancy for you too, even if you did not want to move out. If you think your partner might do this you may be able to prevent it but you will need to take expert advice before any formal notice is given.

If you are married and divorcing or if you were living with a partner, then in the long term you can ask the court to transfer the tenancy into your name. The court will take both your situations into account before deciding whether to do this.

No matter what relationship you are in it might be possible to voluntarily transfer the tenancy into one name if both of you agree to do this. If this is a realistic option you will probably not have to go to court. Whether you can pursue this course of action will depend upon what type of tenancy you have and you may need to get independent advice. It is very important that you use the correct legal method to transfer the tenancy otherwise you might lose the tenancy completely. It is not usually enough just to tell your landlord that one of you is moving out.

## **If only your partner's name is on the tenancy**

If your partner formally ends the tenancy by giving legal notice to your landlord where they are the sole tenant then this will end the tenancy for you too, even if you do not wish to move out. If you think your partner might do this you may be able to prevent it but you will need to take expert advice before this happens.

## **Unmarried couples - short term rights**

If you are not married and your partner is the sole tenant, then you will only be able to remain in the property with his/her agreement. In the short-term you may be able to get an occupation order from the court to allow you to stay temporarily. Your rights to do this will be strengthened if you have children. If your partner (the tenant) moves out and you have not got an occupation order from the court, in certain circumstances you could be evicted. If you think your partner is intending to move out you need to take independent advice quickly.

## Married couples - short term rights

If your partner is the sole tenant but you are married, you have the right to:

- occupy the matrimonial home, and not be excluded, except by court order
- if not occupying the home, to obtain a court order to regain entry and live there
- pay the rent (although you cannot be held legally liable for the payments unless liability has been transferred by the court).

If you and your partner cannot agree about living arrangements during a marital breakdown, then you can apply to the court for an occupation order and the court will decide what should be done in the short-term.

## Long term options for married and cohabitating couples

If you are married and getting divorced or you had a relationship then in the long term you can ask the court to transfer the tenancy into your name. The court will consider both your situations before deciding whether to do this.

No matter what relationship you are in it might be possible to voluntarily transfer the tenancy into your name if your partner agrees. Whether or not you can do this depends on the type of tenancy your partner has and you will need to seek independent advice.

If it is possible to do this it is very important that you use the correct legal method to transfer the tenancy otherwise you may both lose the tenancy completely. It is not enough just to tell your landlord that your partner is moving out.

## If only your name is on the tenancy

If you are the sole tenant of the property, you will have many rights in the short-term as any person sharing with you can only remain in the home with your agreement, unless they are married to you or obtain an occupation order from the court. However if you have been in a relationship, or are married, your partner can apply to court to get the property transferred into his/her name. If you don't want to stay in the property it may be in your interests to try and get the tenancy transferred into your partner's name. This will end your liability to pay the rent. You will need to take independent advice about doing this.

## If you own your own home

This section looks at your rights to stay in your home in the short and the long term if you or your partner (or both) is/are the owner(s) of the property.

### If both partners jointly own the property

If both your name and your partner's name are on the deeds of the property then you are a joint owner. You have a number of very important rights no matter what sort of relationship you are in. These rights are yours automatically and they can only be changed by a court order unless you both agree.

These basic rights are:

- you and your partner have equal right to live in the property
- neither of you can be made to leave without a court order
- if you or your partner wishes to sell or re-mortgage the property, you both have to agree. If you fail to agree, the property cannot be sold or re-mortgaged without going to court.

If you have a mortgage you will both be liable for payments and you could be asked by your lender to pay the whole amount if your partner stops paying. If the payments are not made your lender may try to repossess the property and try to sell it. If your lender sells the property for less than the amount outstanding on your mortgage you and/or your partner will have to make up the difference. If you are having, or are likely to have problems paying your mortgage you should seek immediate advice in negotiating with your lender and looking at other options. If you and your partner cannot reach some agreement about the property or, in the longer term, you want to rely on more than an informal agreement you should get legal advice and you may have to consider getting a court order.

## Court orders

If, in the short term, you cannot agree who will live in the property you can get an occupation order. This will decide who can stay in the property and what happens about the mortgage. An occupation order does not affect your long term rights to the property. In the long term if there remains a dispute over who should stay in the property or whether the property should be sold, you will need specialist legal advice.

The courts can make a variety of decisions about the future of your property. What they decide will depend upon your individual circumstances and whether you are married, cohabitating or have children.

If you are married the court can order:

- the transfer of the property into one person's name
- the sale of the property
- that the partner caring for the children stays in the home
- that one partner stays in the property and pays rent to the other partner.

The court can also do any of the above if you are a cohabitating couple with children, using the Children Act. Any order made by the court would have to be in the interests of the child/children.

If you are not married and have no children the court has no power to transfer ownership from both of you to one person. However, the court can make an order that the property be sold, that the property must not be sold or make a declaration about its use.

At the court hearing your share of the value of the property will also be set out. Being a joint owner does not automatically mean that you are both entitled to half of the value of the property.

If you are married and getting a divorce the courts will look at your particular circumstances and may decide to give you an increased legal share in the value of the property. If you are not married then the court has no power to do this and it will have to look only at what you agreed when you bought the property.

## **If your partner owns the property**

If you are not married and share your home with a partner who owns the property, you are likely to have few rights to remain in the property unless you have children. If your partner wants you to leave, he/she can probably just tell you and give you some time to do so. You may be able to get some extra rights in the short term by applying to the court for an occupation order. You need to seek expert advice about how to do this.

If you don't have children, you will only have any long term rights to remain in the property if you have a financial share (interest) or a right to stay in the property. For example, you might have had a written agreement with your partner that you should have a share of the value of the property when it was sold. Some people have financial interests that are not written down anywhere. You may be able to argue that you have a financial interest if you made, or contributed towards, mortgage payments, paid towards the deposit or agreed with your partner when you bought the property that it belonged to you both even though you were not going to put your name on the mortgage.

If your partner does not agree that you should have an interest in the property you can ask the court to decide. The court will look at anything in writing which states that you have an interest and will consider any discussions that you and your partner have had about the property. Other things that might be relevant will be if you gave up somewhere else to live on the understanding that you would be able to stay long term and any money you have paid for the property. This is a very complicated area of law and you will need to take expert legal advice.

## Court orders - unmarried couples

If your partner tries to make you leave while you are sorting out your interest in the property you might be able to get an occupation order to allow you to stay in the short term.

If you can show that you have got an interest in the property you will have a right to stay and you will be able to apply to the court to order or postpone the sale of the property if you cannot both agree what to do. If you are worried that your partner may try to sell or remortgage the property you should seek legal advice straight away.

If you are married and your partner owns the property you live in you will have rights to stay in the property in the short term. You have a right to:

- occupy your matrimonial home, and not be evicted except by court order
- register a 'charge' on the home, which will entitle you to prevent your partner selling or re-mortgaging the property
- pay the mortgage (although you will not be held legally liable for payments unless liability has been transferred by the court), this is useful if your partner leaves or stops paying.

## Court orders - married couples

If you and your partner cannot agree about living arrangements in the short term then you can apply to the court for an occupation order which will set out your rights.

In the longer term the court can transfer the property into your name as part of your divorce proceedings in the same way as a joint owner. You might be able to argue that you have a financial stake in the property in the same way as a joint owner or you might be able to argue that you have a financial stake in the property in the same way as an unmarried non-owner (see previous section).

## **If you are the sole owner of the property**

You will have a great many rights in the short term about what should happen to your property and, unless you are married, your partner would have to apply for an occupation order to stay in the property if you ask him/her to leave. However, in the long term your partner could try and establish that although you are the sole owner he/she has a financial stake in the property in the way outlined in previous sections. If you are married or have children your partner could try to get the property transferred into his/her name as part of divorce or Children Act proceedings. Your partner would have to go to court to do either of these things and if he/she does you should seek legal advice straight away.

## **If you want to stay at home but would be at risk of violence**

If you want to stay in your home, but by doing so you would risk violence, abuse or mistreatment you may be able to obtain an injunction to protect you and your children. Injunctions are orders from the court which tell a person not to do something. In an emergency, an injunction can often be applied for at very short notice.

The court will only grant an injunction if it believes the injunction is necessary to stop any further harm or violence. If some time has passed and the danger or emergency seems to be over, then the court may see no reason to intervene. If you feel you need protection you should seek legal advice straight away. Injunctions do not guarantee you protection, but can be a very effective deterrent. They will usually only be a temporary solution and so you will need to also look at other long term solutions.

## What types of injunction can I get?

There are two main types of injunction you could get. These are:

### Non-molestation order

This type of order would be used to tell a person to stop being violent or abusive.

You can get a non-molestation order if:

- you are, or have been married or cohabiting
- you live or have lived in the same household. This includes people in a same sex relationship
- you don't live in the same property, but you are related or have agreed at some point to marry each other
- you are parents of a child or have a legal parental responsibility
- you can also get a non-molestation order for a child.

You do not have to prove violence to get a non-molestation order. Molestation can cover many forms of behaviour including harassment and pestering. In making a non-molestation order the court must consider all circumstances including the need to secure your health, safety and well being or that of a child.

### Occupation order

This is an order from the court which says who is allowed to live in a property. You can get an occupation order against any of the people mentioned in the previous section if you are an owner, tenant, or have some other legal right to occupy your home (for example, because you are married to the owner or tenant or, in some cases, if you have put money into the home).

Occupation orders are also available to people who have no rights to the home if they are former spouses, heterosexual cohabitants or heterosexual former cohabitants of the abusive person. In these cases the court will consider matters such as how long the relationship lasted and when it ended. You don't have to be in the home to apply for an occupation order.

You do not have to prove violence to get an occupation order. The court will decide whether to make an occupation order based on how it thinks having or not having an order is likely to affect you, your ex-partner and any children. The court will take into account the possibility of ill-treatment (physical or non-physical) and the possible effect on your physical and mental health. The effect on the development of any children must also be taken into account.

## **What happens if an order is broken?**

When the court makes the order it may decide to say that if it is broken the offender should be arrested. If the court does not say this then your solicitor will need to ask the court to order the offender to come back to court if he/she breaks the order. The punishment for breaking the order could be a fine or imprisonment. The court will not usually send someone to prison the first time unless it considers it is very serious. It is more likely to give a warning.

## **How long do the orders last?**

The court decides how long to make the order last. The court can make a non-molestation order last for as long as it chooses. In many cases this will only be for a few months but it can be renewed. Occupation orders for people who are owners, tenants, have a financial interest in the home or are married to the owner or tenant can be for any length of time. For people who have no other rights to occupy the home the order lasts up to six months, but it might be renewed.

## If you don't want to stay in your home

If your situation means that you can't or don't want to remain in your home you will have to consider renting or buying another home. In these circumstances you should seek our advice and assistance.

### Asking for help

If you become homeless as a result of your relationship breaking down you may be able to get help from the Council. We will only help you immediately if you don't have a right to remain in your accommodation or if you can show that the situation is so bad that you can't remain even though you have a right to do so.

If you are homeless and have children with you or you are pregnant or vulnerable in some other way (usually due to ill health, age, state of mind or possibly due to your situation; for example, you may be suffering from domestic violence) we will have to provide you with temporary accommodation whilst we look into your case. We may find that we have a duty to find you accommodation in which you can live in the longer term.

You can also be treated as a homeless person if you are suffering from, or are threatened with domestic violence. It is very important that you explain your problem in detail to the Housing Options Team as they have to investigate what you say to be able to decide what the Council legally has to do. The more information you can provide the quicker the investigation can be.

Applying to the Council as homeless does not mean that you will automatically be offered alternative accommodation.

## Refuges

If you are at risk of violence or abuse in the home and need somewhere else to live you may be able to get immediate help at a woman's refuge. Refuges provide temporary accommodation for women and children who need protection from violence or abuse. They offer a safe place and support to allow you to decide what you want to do.

## Useful telephone numbers

### Housing options team

Chiltern District Council  
King George V House  
King George V Road  
Amersham  
Buckinghamshire  
HP6 5AW

**Tel:** 01494 732013

**Email:** [housing@chiltern.gov.uk](mailto:housing@chiltern.gov.uk)

### Buckinghamshire County Council Social Care

**Tel:** 0845 3708090

### Wycombe Women's Aid (covering Chiltern)

**Tel:** 01494 461 367

## **Paradigm Housing**

**Tel:** 0300 303 1010

## **Chiltern CAB (Citizens Advice Bureau)**

**Tel:** 0844 245 1289

[www.chilterncab.org.uk](http://www.chilterncab.org.uk)

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or format, please contact us on (01494 729000)**