

Frequently Asked Questions

Co-habitation rights and advice

I am a Common Law Spouse, so I must have a claim against my partner's assets?

Although this is a popular belief, people who cohabit are not Common Law Spouses, they are Cohabiting Partners, and as such do not automatically have a financial claim against the other person.

There is no current provision in the law of England and Wales for there to be a financial settlement between separating cohabitees, unlike in Scotland.

Whether a cohabitee can make a claim against the other will depend on whether they have any joint assets, or in the case of a property, whether it is in joint names or one person's sole name. In most cases, when cohabitees jointly own a property, they are entitled to realise their share of the property if they separate. This will either be an equal division of the equity in the property, or any other division that may have been agreed in advance by the couple when they bought the property. This is sometimes set out in a Deed of Trust to protect their contributions. When it is not clear what the division should be the couples' financial dealings and their intentions will be looked at to determine their shares in a property. The outcome of each case will be based upon its facts.

Can I make a claim against my partner's house/assets?

If you have cohabited in a property owned solely by your partner, you will only have a claim against the property if you can prove that you have established that there is a trust. Usually this means that you must have made a financial contribution to the property and you understood that by doing so you would obtain an interest. It is very unusual to be able to claim against other assets. For example, if your former partner has a pension, you would not be able to make a claim against that.

We have children together, so he must have to provide a house for me?

This is a common view but unfortunately not right. If you are unmarried, have lived together and had children, there is no duty for your former partner to provide a house for you and the children.

What will happen will depend on how any property is owned. If it is in your joint names and then both of you are entitled to realise your share of the property except in limited circumstances. If the property is in your former partner's sole name, you would have to prove that you have an interest in the property. In certain circumstances, a claim can be made under the Children Act for financial provision and in very limited circumstances this does mean that one party may have to provide a house for the children whilst they are under 18, but the house would always belong to the other person and would revert to them when the children reached 18. This usually only happens when one party is extremely wealthy, and the other party is not. In most usual cases, there is no duty for one partner to provide a house for the other even if there are children.

For further information, or to arrange an initial consultation, please email lawyer@wbw.co.uk or complete our [get in touch form](#) and we will be delighted to help you.