

# CLIENT GUIDE TO COHABITATION

This form is for unmarried couples who are not in a civil partnership to complete where they are proceeding to purchase a property in which they intend to cohabit.

This form deals with the following questions:

Who will hold the property?

Who will own the property and in what shares?

What will happen to the property if the relationship ends or on death?

Please read these notes and the whole form carefully before completing it. Please discuss it with your partner, as you will both have to sign it. Please make an appointment with the member of this firm handling your property purchase if you wish to clarify its contents or discuss your personal position. Please return the completed form to this firm so that we may understand your wishes and our instructions.

1. A couple fall in love, buy a house or flat and cohabit. Probably the last thing on their mind is, who owns what share in that property? However, relationships do break down and fatal accidents and bankruptcies do happen. For these and other reasons, it is essential when buying a property to discuss and record who is to own it. A failure to do so can lead to much heartbreak later, as well as to substantial legal costs.
2. Every couple has different circumstances. Accordingly, the law can be quite flexible. It will allow the couple to decide how the property in question is to be held, who will own it and what will happen to it if the relationship should end. Problems usually arise where the couple fail to make a decision or fail to record adequately what they have decided.

## HELD AND OWNED

3. Most homes in England and Wales are registered. This means that details of the property and the person[s] holding it are recorded at the Land Registry. This register is open to the public. The person[s] holding the property may be (and usually will be) the true owner[s]. However, they need not be. Sometimes people wish to conceal the identity of the true owner[s] of property and the law allows them to do so. It will be for the couple to decide who they want to hold the property and who will be the true owner[s].

## SINGLE OR JOINT

4. A property can be held in a single name or it can be held in joint names.
5. A property can be owned by a single person or it can be owned by two (or more) people jointly.
6. Where two people own a property jointly, they may each have equal shares or they may have unequal shares. It is for them to decide.

## **SURVIVORSHIP AND INHERITANCE**

7. Where two people own a property jointly, they may agree that when one dies, the survivor should automatically become owner of his share. This is known as a joint tenancy and carries with it a right of survivorship and it operates independently of any will that the deceased person may have made. Alternatively, they may agree that when one dies, his share should be inherited by the persons he has named in his will – this is known as a tenancy in common. It is for the couple to decide which of these alternatives they want.
8. If someone dies having failed to make a will, then there are statutory rules governing the inheritance of his property. Where a couple are married these rules benefit the surviving spouse and children and other relatives. However, where a couple are not married and one dies having failed to make a will, then although the same statutory rules operate, these rules do not recognise a “cohabitee” as a spouse. In fact, these rules do not recognise a cohabitee at all. Accordingly, a surviving cohabitee could face losing not just their partner but also their home. For this reason, it is desirable that cohabitees make provision for what they wish to happen on the death of one of them, by entering into a Trust Deed or making a Will, or both.
9. When completing section 10 of the questionnaire at the end of this guide please bear in mind the following points
  1. shares in a joint tenancy are always equal
  2. a joint tenancy can be converted into a tenancy in common by either owner serving on the other the requisite notice of severance but the shares remain equal
  3. if there is a tenancy in common and the Trust Deed regulating ownership specifies where the share of one owner is to pass on his death that can only be changed during the lifetime of both owners by a supplemental deed signed by them both
  4. if there is a tenancy in common and the Trust Deed states that on the death of one owner his share is to pass under the terms of his Will then he is free to change the recipient of his share at any time by making a new Will

## **MORTGAGES**

10. Most properties are bought with the assistance of a loan made by a bank or building society, which then takes a mortgage over the property as security for its debt.
11. Mortgages are usually repayable by regular instalments and lenders usually require borrowers to show that they have sufficient earnings to be able to afford the repayments.
12. A mortgage loan may be made to a couple jointly. They will then both have a legal obligation to repay it. Or the mortgage loan may be made to just one party and only he/she will have a legal obligation to repay it. However, in either case, both may be earning money that they pool and use to repay it. Or both may be earning money but only one may repay it, the other one paying other household bills. Or only one may be earning money and repay it and the other may run the

household and look after children. In these and related situations, a decision should be taken whether the money loaned is to be treated as provided and repaid equally by the couple, or wholly by one party or in some other proportion.

13. Sometimes a couple assume that because one party has the income that the lender has relied on in order to grant the mortgage loan, that same person must either hold or own the property. That is not so. What is generally true is that the lender will require the person with this income to enter into the mortgage agreement, whether or not he also holds or owns the property.

## **PURPOSE**

14. Most properties are bought for a purpose. Typically this would be to provide a joint home for the couple.
15. The question then arises, what is to happen to this property when the purpose has come to an end, for example because the couple have split up or one has died? Should the property immediately be sold and the proceeds divided between them? Or should one party be allowed to continue living in the property for a time – for example until children have grown up or until that party's own death? The law allows the couple to decide what they want to happen.

## **WRITING**

16. Arrangements involving land generally take effect only if written down and signed. The best time to make these arrangements is when the property is being bought.
17. It is generally possible to change these arrangements at a later date but such changes also have to be recorded in writing and signed in order to take effect. The consent of a mortgage lender may also be required.

**Please complete the form after having read these notes. Both parties must sign.**

Prepared by:-

**PENGILLYS**

S O L I C I T O R S

Pengillys LLP  
Post Office Chambers  
67 St Thomas Street  
Weymouth DT4 8HB  
  
Challacombe House  
Beechwood Square  
Poundbury, Dorchester, DT1 3SS  
  
Tel (01305) 768888  
Fax (01305) 768777  
e-mail [www.pengillys.co.uk](http://www.pengillys.co.uk)  
Ref:

## COHABITEE QUESTIONNAIRE

1. Names of the couple:

Name:

.....

Name:

.....

2. Address of the property being purchased for cohabitation:

.....

.....

.....

3. Purchase price of the property:

£

.....

4. How the purchase price is being funded:

Funds provided by mortgage lender

£.....

Funds provided by name: .....

£.....

Funds provided by name:.....

£.....

Funds provided by others\*:

Name: ..... Relationship: .....

£.....

Name: ..... Relationship: .....

£.....

(\* If others are providing funds details of their rights and interests should be provided to us in writing)

5. Who will be the true owner[s] of the property?  
(Insert either both parties' names or the name of only one party)

.....[and  
..... ]

6. If both parties' names have been inserted in no.5 above, then what will be the percentage share in which each party will own the property?  
(the total must be 100 per cent)

Name	%
.....	.....
Name	%
.....	.....

7. In whose name[s] will the property be held? (Choose one of the following:)

In the name[s] of the true owner[s] as shown in no.5 above (yes/no)  
(delete as appropriate)

Or

In the following names[s]

.....

8. Who will sign the mortgage agreement and accept legal liability for payment?  
(The person whose income the bank has relied on to make the repayments must sign, as must the party named in no.7 above. But if just one party, then the other party can be added if desired.)

The party names in no.7 above [and

.....]

9. Paying the mortgage instalments

Whatever the parties have agreed between themselves regarding payment of the mortgage instalments, if there is a change (eg instead of both paying equally, only one pays while the other runs the household or pays other bills or is ill), do the parties agree that their answers to nos. 5 and 6 above will remain unchanged?

(yes/no) (delete as appropriate) (if no what will the change be?)

10. If either party should die, what should happen to the property or their share of it?  
(There should be two answers, one dealing with each party. Those answers may be the same or different)

**Before completing this section please read again paragraph 9 of the Guide**

(i) .....

.....

.....

.....

(ii) .....

.....

.....

.....

11. (a) Does either party have an existing Will?

Name (yes/no)(delete as appropriate)

.....

Name (yes/no)(delete as appropriate)

.....

- (b) Would you like us to prepare a Will for you?

Name (yes/no)(delete as appropriate)

.....

Name (yes/no)(delete as appropriate)

.....

12. If the relationship should break down, what should happen to the property?

Should the property immediately be sold, the mortgage repaid and the net proceeds of sale paid to the person[s] shown in no.5 above as the true owner[s] (and if more than one person) in the shares shown in no.6 above?

(yes/no) (delete as appropriate)

13. If the answer to no. 12 above is no, then state below what should happen to the property, the mortgage and the proceeds of sale. If only one of you is to remain in the property will that person have to pay a market rent to the other person, and will they be solely responsible for all outgoings? When would the property eventually be sold?

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

SIGNED : ..... SIGNED: .....

Dated .....

Please return the completed form to this firm so that we may understand your wishes and our instructions.

Ref:

