

## **Relationship Breakdown? Get advice before you give up your home.**

This guide is not comprehensive, as real-life cases are very variable. You should always get advice from a solicitor, law centre or housing advice office.

Your right to your home will depend on whether you are an owner or a tenant, whether you are married or cohabiting and whether you have dependent children.

***Always get advice before you leave your home. If you leave voluntarily you may be giving up legal rights. If you become homeless and you have voluntarily given up your home the Council may decide you are intentionally homeless. There will then be no duty to find you a new home.***

## **Tenants – your rights**

### **Joint Tenancy**

If you are a joint tenant, both tenants have an equal right to occupy the property.

You cannot force a joint tenant to leave against their will and the only way you can legally prevent a joint tenant from entering the property is with a court order.

The only way that a joint tenancy can be changed is:-

- By one tenant surrendering their part of the tenancy voluntarily
- By a court order transferring the tenancy to one party

If the joint tenant is preventing you from entering or from staying in the property you can apply to the court for an Occupation Order (Family Law Act 1996).

An Occupation Order can:-

- Require someone to leave the property and give a date and time for them to leave (there may be a power of arrest if the person tried to come back)
- Reinstate someone who has been locked out
- Decide who occupies which part of a property

The court will consider the resources, need and conduct of each party before making an order and will consider which party would suffer the greatest harm by being removed. An occupation order is time limited and normally given for 6 months to allow both parties to make arrangements to solve their problems.

If you are married and start divorce proceedings you can apply for the tenancy to be transferred into a sole tenancy as part of the divorce settlement.

If you are not married you can use the Family Law Act 1996 to apply to have the tenancy transferred.

If you have children the court will probably transfer the tenancy to whoever has the care of the children.

## **Sole tenancy**

If the tenancy is in your name only you are the sole tenant and you have a right to occupy the premises unless a court order removed that right.

If you are married and the tenancy is in your spouse's name you have a right to occupy because it is the matrimonial home.

If you are not married and you are not the tenant:-

- If your relationship is recent you may have no rights in the property
- If your relationship is long term and you have children together the Family Law Act can be used to transfer the tenancy, usually to the main carer of the children

An Occupation Order may be used to give a temporary right of residence while the long term rights are being dealt with.

## **Owner Occupiers – Your rights**

***Never agree to give up your half of a home without taking advice first. If you become homeless and you have voluntarily given up your home the Council may decide you are intentionally homeless. There will then be no duty to find you a new home.***

## **Joint Owners**

If you are a joint owner you have an absolute right to live in the property unless a court order has removed that right.

To transfer ownership to one of the joint owners is much more complicated than for a tenancy. You cannot use the Family Law Act. You can use The Matrimonial Causes Act and sometimes the Children Act. A court would weigh up whether it is reasonable to transfer ownership and whether you would be able to afford to remain in the property.

This is a very complicated area of law and you should always consult a solicitor in cases like this.

## **Sole owner**

If you are the sole owner you have an absolute right to the property.

If you are married to the sole owner you have a right of occupation of the matrimonial home but any financial interest in the property would have to be decided through a solicitor or through the courts.

If you are living with the owner you may have few rights. If the relationship is long term and you can show that you contributed to the mortgage or household expenses

you may be able to show a financial right to the property. You should consult a solicitor about this.

You may be able to get a temporary right to occupy through an Occupation Order.

### **Domestic Violence**

If you are a victim of domestic violence, first make sure that you and your children are safe. This may mean leaving your home for a short time while you take action to remove the violent partner.

If you have to leave your home because of violence you should see a housing advisor at the Council offices as a matter of urgency. The housing advisor will refer you to specialist services who can help with legal advice and a safe place to stay.

If you are a tenant your landlord may be able to help you. Talk to your housing officer if you have one.

Whether you are a tenant or an owner occupier there are legal steps you may be able to take to remove a violent partner from the premises and to make the premises more secure.

You should always report domestic violence to the police.