



Housing: Options

When couples separate there can be disputes about who will stay in the family home. This factsheet gives information about your rights and options at this difficult time.

What is the "family home"?

A family home is a property that a husband and wife, co-habiting couples or civil partners have lived in together before they separated or that they intended to live in before they separated. This property can be rented or bought. If you are married the family home is also known as the matrimonial home.

What rights do I have to stay in the family home after separation?

The rights you have to stay depend on whether you were:-

- married, in a civil partnership or cohabiting; and
- whether the family/matrimonial home was rented or bought.

Rented Properties

Married couples or civil partners

If your spouse or civil partner moves out of the home you have a right to stay there even if you are not named on the tenancy agreement because you have occupancy rights. You have these rights automatically and will keep these rights after they leave. If your name is on the tenancy agreement you have the right to stay there anyway as the tenant. If you stay because you have occupancy rights this means:-

- You can live in the home as if you are the tenant;
- Your children also have the right to live there;
- Your spouse or civil partner cannot transfer or sublet the tenancy without your agreement;
- You cannot be evicted by the landlord unless they get a court order and you have the right to defend any court action to evict you;
- You have the right to return to the home even after a long time, the length of which depends on when you moved out. If this was after 4th May 2006, your right to return expires after 2 years. If you moved out before 4th May 2006, it expires once you are divorced or your civil partnership is dissolved.

Cohabitees

If you were living with someone in a property where you were not the tenant and you were not married or in a civil partnership, you do not have automatic occupancy rights. If you want to stay in the home you will have to apply to the court for occupancy rights. If you are given occupancy rights, this will be for a maximum period of 6 months

after which time you have to ask the court to renew them. These rights can be renewed as many times as the court thinks is needed. If you are in this position you must consult a solicitor. If you were the tenant or joint tenant, you have the right to stay in the property as a tenant.

Owned Properties

Married couples or civil partners

If your name is on the title deeds as an owner or joint owner you cannot be put out of the house except by a court order. If your name is not on the title deeds but you are married or are in a civil partnership, you still have automatic occupancy rights. These rights last until:

- you are divorced or the civil partnership is dissolved
- if, after 4th May 2006, you leave the home and do not return for two years or more. This only applies if you and your spouse or civil partner did not live together during those two years. If you left before 4th May 2006 your right to return will continue until you get divorced or your civil partnership is dissolved.

Cohabitees

If you have been cohabiting, you do not have automatic occupancy rights if your name is not on the title deeds. However, you can apply to the court for occupancy rights and the same rules for these apply as for rented properties above.

Applying for Occupancy Rights

If you do not have automatic occupancy rights you should consult a solicitor as soon as possible. You will be advised about legal aid and the prospects of being successful in court. The court will look at things such as how long you and your partner were cohabiting and whether there are any children. There is no guarantee that the court will grant your application and your solicitor will advise you accordingly.

I want to stay in the family home but my ex has said s/ he will not pay the mortgage. What can I do?

If you have a joint title you can simply pay the mortgage yourself. Even if you are not the owner, if you have occupancy rights you can pay the mortgage without the other spouse's consent. If you can't afford the mortgage and you are married, you can ask the court to order your spouse to pay the mortgage. The court will decide if they should pay and for how long.

If the mortgage is already in arrears and the lender tries to repossess the house you can ask the court to suspend the action for a period. This will apply if you are married, cohabiting or in a same sex relationship. There must be a child under 16, of the relationship, living in the house with you. A suspension of the order could be used to give you time to get a job or for Income Support mortgage interest payments to kick in. (See Factsheet 8: Housing: Help Towards Costs.) In any situation where the mortgage is not being paid you should see a solicitor as soon as possible.

Can my spouse/partner put me out or can I put them out?

If you are married, in a civil partnership or have been granted occupancy rights it is difficult for you to be put out of your house legally. A court order, called an "exclusion order" would need to be issued to have you (or your partner) removed. This order suspends the right to stay and is most frequently used when domestic violence is involved, however it may also be granted where there are threats made to children, physically or mentally.

If you or your children have been assaulted you should consult a solicitor for help immediately. If you have been violent or threatening you may be excluded from your house and you should seek legal advice as soon as possible. If you are married or in a civil partnership an exclusion order will last until:

- one of you applies to the court to cancel the order and the court agrees to this or;
- one of you gives up your right to live in the home or;
- you are divorced or your civil partnership is dissolved or;
- one of you dies or;
- you both lose your rights to stay in the house e.g. by eviction or repossession.

If you were cohabiting, occupancy rights will last:

- up to 6 months. The court may renew the exclusion order for a further period or periods if you ask the court or;
- one of you asks the court to cancel the order and the court agrees to this or
- one of you dies or;
- you both lose your rights in the property e.g. by eviction or repossession.

I don't want to stay in the family home so

how can I get re-housed?

Unless you have sufficient capital to buy another property you will have to look at renting a property. There may be various options open to you.

Council Property

If you have already had your name on the council housing list you may qualify for a house under their allocation policy. Councils use a points system and the more points you have, the quicker you will be housed. You should contact your local housing office to see where you are in the queue for being allocated a house or to ask if they can award you more points to speed up the process. If you are not already on the housing list or if you do not have enough points to be re-housed you may be able to be re-housed as a homeless person particularly if you are fleeing domestic violence. If you have nowhere to live you can contact the Homeless Person's Unit of the Council. They must find you somewhere temporary to stay while they consider your application. This may be a homeless flat, a hostel or a bed and breakfast. The Council will then look at your application to be re-housed as a homeless person and will look to see if you pass 4 tests as follows:

1 Are you homeless?

This does not mean sleeping in the streets. You may have had to go to a friend's or relative's house and the accommodation is unsuitable.

2 Are you in priority need?

There are a number of reasons why someone will be regarded as priority need: if you are pregnant, if you have dependent children or you are at risk of domestic abuse.

3 Are you intentionally homeless?

It is for the Council to prove that you became homeless intentionally, not for you to prove that you did not. They will ask did you deliberately do or not do something that caused you to leave accommodation that you could have stayed in and which would have been reasonable for you to stay in.

4 Local Connection?

This is to see if you have a connection with the area where you are asking to be re-housed. They will look at how long you have lived in the area, whether you have family in the area or whether you work there. If they do not think you have a local connection they can refer you to another local authority where you do, provided that it would not put you at risk of abuse.

If you are fleeing domestic abuse and have children it is likely that you will pass these tests and will be re-housed. The Council will provide you with temporary accommodation until they can find you permanent accommodation. Remember that in some areas Council properties are in short supply.

Ask if there is a Common Housing Register for your area. This is a scheme where other social landlords (housing associations) offer to help re-

house people. If there is such a Register you only need to fill out one application with the Council and they will pass the details onto any other social landlords in the area. This increases your chances of being re-housed more quickly.

If you are unemployed and on benefits you will probably qualify for Housing Benefit and Council Tax Benefit to help pay for your housing costs. The council will ask you to complete the forms for these benefits and will process them for you.

Housing Associations

A Housing Association is a non-profit making organisation that provides and manages houses and flats for rent for people on low incomes. Rents will be significantly cheaper than an equivalent private let. You are able to apply in one of two ways: directly to the Housing association itself or through the Common Housing Register at your local council.

Private Rented Accommodation

Private rented accommodation is available furnished or unfurnished. Rents are usually much higher than the council and a deposit may be required. Check local newspapers, ads in shop windows and letting/estate agents. All landlords have to be registered with the Local Authority and you should check if a landlord has been registered before agreeing to rent from them.

Shared Ownership

If you cannot afford to buy a property independently you could consider shared ownership through a Housing Association. If you are offered a tenancy of a Housing Association house they will normally tell you about the shared ownership scheme. You can buy a 25%, 50% or 75% share of the property for which you can take out a mortgage. The balance is paid as rent for which you may get Housing Benefit. Your ownership share can be changed if your circumstances change. You can sell the house back to the Housing Association.

Changes to the Right to Buy Your Council Home

The Housing (Scotland) Bill, published January 2010, will end the right to buy on new social housing and for new tenants in social housing. The reforms are part of the Housing Bill, a legislative package of measures to improve the supply and quality of housing in Scotland. For more information on your housing rights call the Lone Parent Helpline 0808 801 0323 or Shelter Scotland on 0808 800 4444.