



Mortgage Protection for Cohabiting Couples – Life Advisory Services

We advise that your client seeks professional tax and legal advice as the information given is a guideline only and does not take into account your client's particular circumstances.

An area for concern among cohabiting couples is the area of property ownership, and the taxation treatment of the house they live in on the death of one cohabiting partner.

The stranger threshold for Inheritance Tax is €15,075 (December 2012). Inheritances in excess of this are subject to tax at 33%. So where the ownership of the house passes to a surviving partner on the death of the cohabiting partner, he or she could have a considerable tax bill.

Does the property automatically pass to the survivor in every case?

The simple answer is NO. There are two types of joint ownership which might apply - either a joint tenancy or a tenancy in common.

If the property is owned as a **joint tenancy**, the presumption is that the whole property passes to the surviving owner automatically on the death of one of the owners.

If the property is owned under a **tenancy in common**, the law provides that each of the owners holds a separate and distinct share from the other and therefore the surviving owner does not automatically inherit the share of the other joint owner who has died. The share of the deceased, in this case, passes to the beneficiary named in the deceased's Will, if any, or under the rules of intestacy if there is no Will.

It is important to remember that cohabitants have no automatic rights to their deceased partner's assets under the Succession Act. So if the property is owned under a tenancy in common, and your cohabiting clients have no Will in place, their share of the property could end up in the hands of the deceased's 'next of kin', their parents or brothers and sisters.

Will Inheritance Tax always apply?

The Finance Act 2000 introduced a complete exemption from Inheritance Tax on the value of "a dwelling", provided the person inheriting the property satisfied certain conditions – basically that it was, and continues to be, their home. This is commonly referred to as "family home" relief.

The relief is available to any individual who satisfies the conditions and not just to qualified cohabitants.

To qualify for the exemption the person who inherits* the home must:

- have occupied the house as their sole or main dwelling for three years prior to the date of the inheritance,
- at the date of the inheritance does not hold an interest in any other dwelling house,
- continue to occupy the house as their sole or main residence for 6 years after the date of the inheritance.

What this means is, once a couple have been living in the house for 3 years, regardless of which of them own the house, paid the mortgage or the mortgage protection policy, there will be no Inheritance Tax liability on the value of the house if the above conditions are met.

However, if the above conditions are not met then there could be significant tax implications for the survivor. For example, what if one of the cohabiting partners owns other property which also passes to the surviving partner on their death or indeed the surviving partner already has an interest in a property of their own?

** Where the dwelling house is passed as a gift during the life of the original owner of the property there are additional conditions to be met.*

Hopefully the following examples will explain this and provide solutions for the tax liability.

Example 1.

John & Mary buy a house in joint names. They contribute equally to the deposit, the mortgage repayments and the joint mortgage protection policy.

John dies in the first year of the mortgage (House valued at **€300,000**)

The mortgage is cleared by the Mortgage Protection Policy
Mary inherits **50%** of property (assuming held as joint tenants)

Threshold for Mary **€15,075** at 33% on €134,925 = **€44,525**

Options

1. Increase Mortgage Protection policy by €45,000
(possible tax on €45,000 at 33% = €14,850)
or
2. Life of another policy for €45,000

Example 2.

Mary lives with John in his house. John paid the deposit, and as the sole earner pays the mortgage repayments and the joint mortgage protection policy.

John dies after only two years of them living together (House valued at **€300,000**)

The mortgage is cleared by the Mortgage Protection Policy
Mary inherits **100%** of property (John leaves this to Mary in his will)
Remember, cohabiting couples have no automatic rights to their partners property!!

Threshold for Mary **€15,075**, tax at 33% on €284,925 = **€94,025**

Options

1. Increase Mortgage Protection policy by €95,000
(possible tax on €95,000 at 33% €31,350)
or
2. Life of another policy for €95,000

So based on the above there are a number of things you need to think of when advising your cohabiting clients.

- How long are they living in the house?***
- Is there any other property owned by either of them?***
- How is the house owned? Who will inherit the house?***

Remember if the conditions for Family Home Relief are not met then there could be significant tax implications for the survivor.

For further information on how to structure life assurance arrangements for your cohabiting clients and for more details about the legislative and taxation changes resulting from the Civil Partnership Act and Finance Act (No 3) please see our various "Advising Cohabiting Couples" documents on Bline.

The legal and tax information included in this technical guide is correct as of December 2012. The examples included in this document are not based on any real individual circumstances and should not be constituted as advice in any particular instance.

Information is correct as at December 2012 but is subject to change.