

Cohabitation

This note deals with financial issues on the separation of cohabitees, as opposed to married couples. For information on issues relating to children of cohabitees, both practical and financial see **Children** note.

This is a complex area of law and one upon which you should obtain legal advice from a family law solicitor in London as to your particular circumstances. Those circumstances may well alter the interest which is set out in the Land Registry Title Deed.

Trusts of Land and Appointment of Trustees Act 1996

This legislation deals with the ownership of property and land between unmarried couples. The first step is to ascertain how property is legally held, that is, the Title held with Land Registry. At the outset of your matter, we would undertake a Land Registry search against your property which would tell us how the property is held.

Most couples own property as 'joint tenants'. This means that if one of you dies, the survivor will be entitled to the whole property irrespective of any provisions in a Will, or if there is no Will, irrespective of the intestacy rules. If that is the case, a simple document called a Notice of Severance can be prepared which you sign and which must be sent to your former partner for signature. Once you have both signed this, it will be lodged at the Land Registry. Even if your former partner does not sign the document, the property will then be owned by you both as 'tenants in common'. This means that if you died before your former partner, your share in the property would pass according to the terms of your Will, or under the rules of intestacy if you had no valid Will as would your former partner's share. If there was a dispute it would be necessary to prove your former partner had received the Notice of Severance, so to prove this, it should be sent by recorded delivery.

If you have made a Will in your former partner's favour, you will no doubt want to review this on separation. If you have not made a Will, this is a good opportunity to do so. We can recommend solicitors who can deal with this for you.

The law relating to beneficial ownership of a property

'Legal interest' is defined by how the property is held legally e.g. Joint tenants. 'Beneficial interest' can be different to legal interest and this depends on the facts of your case.

It may be that you have a greater or lesser 'beneficial interest' in the property than your legal interest and this may be your entitlement rather than the legal interest.

The starting point is to look at the Land Registry Title Deed and ascertain how this property is held as stated above. This will often be determinative. However, the Court in the landmark

Supreme Court case of Jones v Kernott [2011] UKSC 53, whether the beneficial interest held by joint tenants can change over time.

Facts of the case: An unmarried couple purchased as joint tenants a property. Mr K moved out of the property and Mrs J remained there and took over sole responsibility for it. Mr K purchased another property. 12 years later, Mr K severed the joint tenancy and claimed half of the property. The Court stated that where a home is bought in the joint names of cohabiting couples, and the mortgage is in joint names but without any express declaration of the parties' beneficial interest then:

- The starting point is that they own the property as joint tenants for both the legal interest and beneficial interest.
- The presumption of joint tenancy can be displaced by evidence that the couple's common intention was different. This can either be at the time the property was purchased or later.
- Common intention is taken objectively from the parties' conduct.
- Where it is clear that the couple had a different intention initially or changed their original intention, but it's not possible on the evidence to work out exactly what their intention was, then each party is entitled to a fair share. To decide this, the Court considered the parties' whole course of dealing in relation to the property.
- Each case turns on its own facts. There are many factors which affect what shares were either intended or fair.

At the time of purchase, parties can enter into an express declaration of trust. This is a document stating exactly how they declare the property is held i.e. who owns what percentage of the property. These documents can be determinative. In Pankhania v Chandegre [2012] EWCA C.v 1438, A and B purchased a property. There was an express declaration of trust in favour of the parties as tenants in common in equal shares. The Court said that an express declaration of trust will be conclusive unless it is set aside, varied or rectified. There must be legal reasons to do these things, otherwise, the declaration of trust will be strictly upheld. The Court ordered a sale of the property and declared that A and B were entitled to the sale proceeds in equal shares.

Cohabitation Agreement

It may be the case that you are considering living with someone and moving into a property owned by one of you or buying a property together. In those circumstances, it may be prudent for you to enter into a cohabitation agreement before you begin living together. This would set out exactly what financial contributions each of you will make to the acquisition of the property and your joint intentions regarding how this is to be divided in the event you were to separate in

the future. For advice and support on setting up a cohabitation agreement, we advise you speak to a member of our team of family lawyers in London.

A cohabitation agreement encourages couples to consider and discuss their intentions before they start living together and entering into this commitment. They both then know where they will most likely stand in the event that their relationship breaks down at a later stage. These agreements are usually upheld by the court, though again the circumstances of each particular case are relevant and determinative. We can discuss your circumstances with you to decide whether such an agreement would be appropriate for you and to explain the various limited circumstances which would lead a court not to strictly uphold such an agreement. We would set out the costs of the agreement for you and help you to make the decision as to whether this would be the best way forward for you.