

CO-HABITEE DISPUTES

Other fact sheets which may be relevant to an unmarried couple are those dealing with domestic violence, children and making a Will. This fact sheet will deal with the problems facing co-habitees when their relationship has broken down and problems have arisen as a result.

WHAT HAPPENS IF THE HOUSE IS IN JOINT NAMES?

With owner occupier property where the house is owned by both co-habitees, the court has power to make such orders as it thinks fit under Section 14 of the Trusts of Land and Appointment of Trustees Act 1996. That is not to say that ownership disputes between co-habitees are best decided by the courts as always negotiation and agreement are preferable to litigation.

When an application is made to the court under Section 14 as well as ordering or refusing a sale the court may make an order preventing sale. The court may also enable a co-owner to proceed with a sale without the need to consult the other co-owner.

When considering what order to make the court must have regard to the following:-

1. The intention of the co-owners
2. The purposes for which the property was bought
3. The welfare of any child who lives in the property or might be expected to live in the property
4. The interest of any mortgagee or person entitled to a share in the property.

Proceedings are commenced in the County Court by way of an application, which must contain details of the Order applied for, and reasons why the Applicant believes that they are entitled to that Order. The application must then be served upon the co-owner.

When the application is made the court will usually set a date for what is called a Pre-Trial Review. At that review the person receiving the application will

usually be ordered to file an Answer to it. The court will also usually direct that there should be a valuation of the property and thereafter the application may be listed for a final hearing before a District Judge.

If the court orders that the property should be sold then the Court should also determine what share of the sale proceeds each party is entitled to. Where there is an expressed declaration, for example in the documentation prepared when the property was purchased, the position is relatively straightforward. For example the Transfer may state that each party owns a 50-50 share. If there is no expressed declaration then the court may need to establish the parties' initial intentions and any financial contributions made by both parties for example mortgage repayments, the deposit or the purchase price.

It may well be that on a breakdown of a relationship the property is not actually sold but that rather one co-owner buys the former partner's share. Where there is a mortgage the net proceeds of sale are the sale price less the costs incidental to sale such as the estate agent's fees and legal costs. The balance is then divided in accordance with the established shares.

Where the property is mortgaged the mortgage will be paid first and the net proceeds will then be distributed as above.

WHAT HAPPENS IF THE HOUSE IS IN THE SOLE NAME OF ONE OF THE COHABITEES?

It is when the home is owned by one partner alone that difficulties arise. Where property is purchased in the sole name of one partner during the relationship or when one partner moves into the property which was purchased by the other previously, on the breakdown of the relationship the non-owner partner is in a vulnerable position.

Briefly the non-owning party must rely on the laws of Trust. It would be necessary to prove it was the intention of the parties that both would benefit from

the property. Financial contribution towards the mortgage as such may not be enough to prove this intention.

Whether the home is rented or purchased the relevant law is complex and in places uncertain making legal advice imperative.

PROPERTY ORDERS FOR CHILDREN

Where there are children of a relationship the court does have some powers to intervene on the relationship breakdown. The Children Act 1989 enables the court to order the transfer of property between parents for the benefit of the child. This relates to rented and owned property. At present, however, there are few reported cases on this and the willingness of the court to make such transfers is uncertain.

RENTED PROPERTY

Where the home is rented and there are no children of the relationship there is often no option on breakdown but for one partner to concede the home to the other, the court does not have jurisdiction to resolve any disputes. Even if there is agreement only where a tenancy is capable of assignment can a straightforward resolution of the situation be guaranteed.

Whether or not the tenancy is assignable depends upon the terms of the tenancy agreement and the security of tenure provided by the type of tenancy in question. The court has no power to intervene where the home is rented and there are no children, unless there is domestic violence which justifies the exclusion of the violent partner pursuant to Part IV Family Law Act 1996.

If a person is in this position he/she should not hesitate to obtain legal advice.

PERSONAL PROPERTY

Generally anything owned before the relationship or purchased by one of the co-habitees during the relationship remains the property of that partner. Gifts, however, remain the property of the recipient. If a couple were engaged to be married an application can be made under Section 17 of the Married Women's Property Act 1882. An application must, however, be made within 3 years of the engagement being broken off.

Lees Solicitors LLP provide this fact sheet free of charge

For further information contact

Jennifer Skillen-Smith
Sarah Dalton

44/45 Hamilton Square
Birkenhead
Wirral
CH41 5AR
T: 0151 647 9381
F: 0151 649 0100
email: jbs@lees.co.uk
sxd@lees.co.uk

Tom Fisher

52A Grange Road
West Kirby
Wirral
CH48 4EF
T: 0151 625 9364
F: 0151 625 5576
email: tbf@lees.co.uk

Renu Rai

90/92 Telegraph Road
Heswall
Wirral
CH60 0AQ
T: 0151 342 6273
F: 0151 642 8026
email: rr@lees.co.uk