

# LEGAL FACT SHEET

## COHABITEE DISPUTES

The law is inconsistent in its treatment of unmarried Cohabitees, sometimes treating them as if they were a married couple, sometimes preferring to treat them as two quite unrelated individuals. Other fact sheets that 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 Cohabitees when the relationship has broken down and problems have arisen in relation to property. The Trust of Land and Appointment of Trustees Act 1996 came into force from the 1<sup>st</sup> January 1997. This had been implemented to deal with issues relating to property owned by Cohabitees.

### WHAT HAPPENS IF THE HOUSE IS IN JOINT NAMES?

With owner occupied property where the house is owned by both Cohabitees, the Court will always have the power to resolve a dispute under Section 14 of the Trust of Land and the Appointment of Trustees Act 1996. The Court will have the power to order the property to be sold and the proceeds split or to deter the sale for a period of time. That is not to say that ownership disputes between Cohabitees are best decided by the Courts, as always negotiation and agreement are preferable to litigation.

A joint owner at any time can apply to the Court for an order pursuant to Section 14. The Court has a wide range of powers, which include and order for sale of the property, an order excluding one party from the property and an order to determine the extent of a person's interest in the property. Under Section 15 the Court must have regard for any minor children who use the property as their home.

Proceedings are commenced in the County Court by way of an application. The property will be valued by an independent Valuer for the Court's benefit if a valuation cannot be agreed. In these proceedings the Court is able to take into account the intention of the parties involved, the welfare of any children, the interest of the mortgagees and the circumstances and wishes of all persons with an interest in the property.

When there is an expressed declaration, for example in the conveyance prepared when the property was purchased, the position is relatively straightforward. The conveyance may state that each party owns a 50/50 share. If there is no expressed declaration, the Court may need to establish the parties' initial intentions and financial contributions made by both parties, for example, mortgage repayments or deposit. It may well be that on breakdown the property is not actually sold, but rather one co-owner buys the former partner's share.

Where there is no mortgage the calculation is often simple. The net proceeds of sale are the sale price less the costs incidental to the sale such as Estate Agents 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.

### IF SOLE LEGAL OWNERSHIP?

It is where the home is owned by one partner alone that difficulties arise. Where property is charged in the sole name of one partner during the relationship or if one partner moves into the property which was purchased by the other previously, on the breakdown of the relationship the non-owner partner must rely on the law of trusts and the provisions of the Trust of Land and the Appointment of Trustees Act 1996. The non-owning party will need to provide evidence that they have acquired an interest in the property.

### PROPERTY ORDERS FOR CHILDREN

Where there are children of the relationship the Court does have some power to intervene when the relation breaks down. 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 dispute. Even if there is an agreement the tenancy needs to be capable of being assigned.

Whether or not the tenancy is assignable depends on 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 the Family Law Act part IV. If a person is in this position he or she should not hesitate to obtain legal advice.

## **PERSONAL PROPERTY**

Generally anything owned before the relationship or purchased by one of the Cohabitees during the relationship remains the property of that partner. Gifts 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.

## **IS LEGAL AID AVAILABLE?**

Subject to financial eligibility Legal Aid may be available.

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

**KHF Solicitors Ltd. provide this fact sheet  
free of charge**

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