

The perils of cohabitees purchasing a property in joint names

A recent judgment giving 90% of a house to a woman who paid the mortgage on a jointly owned property for 13 years after her partner stopped his payments has redefined the property rights of unmarried couples. Michael Howard, a family solicitor at Taylor Walton, examines the case of *Kernott v Jones*, which has highlighted the importance of documentation to confirm the intentions of a cohabiting couple in respect of a jointly owned home when their family circumstances change. It only relates to a joint purchase and does not apply to a couple in a marriage or civil partnership or to a sole purchase by one of a cohabiting couple.

The ownership of property by cohabitees is fraught with difficulties as there is no legislation covering couples in a cohabiting relationship. The phrase 'common law spouse' has no legal meaning and anyone who finds themselves in such a situation should ensure their property rights are properly documented.

The facts

The facts of the recent case were unusual. Miss Jones and Mr Kernott lived together from 1983. They jointly bought a house for £30,000 in 1985. Miss Jones provided the £6,000 deposit, the rest coming from a joint mortgage. They did not state their entitlement to the eventual sale proceeds. In 1986 they used money from a joint loan to build an extension. Mr Kernott did some of the building work.

Mr Kernott moved out in 1993. In 1995 they surrendered an insurance policy and divided the proceeds. Mr Kernott purchased a property in his sole name. From 1996 Miss Jones paid all the mortgage instalments, endowment premiums and household bills on the joint property.

In 2006, Mr Kernott asked for a half share of the property value, which had increased significantly. Miss Jones claimed all the value, the property then being worth £245,000, and asked the court to decide matters. Initially the court decided she should have 90% of the equity. The court considered the entitlement as joint until Mr Kernott stopped making payments and that Miss Jones should have the subsequent benefit of the property increase. The court also took into account the value of the separate property purchased by Mr Kernott. His 10% interest in the joint property, plus his own home value, gave him about £20,000 less in total value than Miss Jones. This was approved on the first appeal.

Mr Kernott then appealed to the Court of Appeal. That Court decided, based more on standard property law, that the house remained in joint names and that the equity should

be divided equally. Miss Jones appealed to the Supreme Court, which unanimously restored the outcome of the original hearing on first appeal.

Two Supreme Court Judges commented on the lack of legislation for cohabiting couples. This decision may be the first step in Judges creating a solution to a common situation for which there is no adequate legislation. However, even this case does not produce a clear outcome which applies universally.

The following principles arise:

1. Unless stated otherwise, joint purchasers are presumed to intend to share the property proceeds equally.
2. This presumption can be altered if a common intention to change this arrangement can be shown, either on purchase or later on.
3. If there is no Trust Deed or similar document, a court can decide ("infer") the common intention based on the conduct of the parties, by words or actions, in the course of their dealings.
4. If the joint ownership presumption does not apply, but the true position is unclear, the court has a duty to decide the issue when requested and can indicate ("impute") what would be fair and appropriate.
5. Each case still depends upon its own facts.
6. Financial dealings between the parties will not necessarily be decisive.

Often one party contributes more than the other to the purchase price of a joint property, as Miss Jones did. This decision suggests that if a property is purchased in joint names the couple is treated as buying on an equal basis unless there is other documentation to show a different intention. Financial contributions made after the purchase might alter the situation.

How can cohabiting couples protect themselves?

It is now essential for couples buying jointly to be clear in their intentions from the outset. If they complete the transfer document to show that they will be beneficial joint tenants, that will apply irrespective of any financial contributions which each may have made. It will also be essential that any change is clearly confirmed in writing, signed and dated by both to verify the position, to avoid very expensive litigation. Preparation of a Trust Deed, either at the time of the original purchase or later, should clarify matters. Similarly, couples can enter into a Cohabitation Agreement at any stage during their relationship in which they specify what will happen to any joint assets in the event of them splitting up.

For advice about Cohabitation Agreements or as to the preparation of a Trust Deed, please contact Taylor Walton solicitors.

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