



COHABITEES – WHAT HAPPENS WHEN A RELATIONSHIP BREAKS DOWN?

The end of a relationship inevitably results in a degree of distress to the parties involved, but for cohabitees trying to resolve ownership of property after a relationship breakdown, matters can become even more complicated. Litigation can often ensue when the extent of each party's entitlement, arising out of the ownership of that property, becomes a bone of contention.

One common scenario, which results in such problems arising, is a when a couple co-habit in a house which is registered in the name of only one of those parties and the other is seeking to establish a claim in the equity in that property. In this situation, the onus will be on the party who is attempting to argue that they have an equitable interest in the property to establish their claim. Once the claim has been established then the extent of that party's claim must be quantified.

To establish an equitable interest, the party seeking to make the claim must be able to prove either a direct financial contribution to the property, or alternatively, that they have indirectly contributed to the property, for example, by paying household expenses or contributing to childcare.

Once that has been established, the claimant must also demonstrate that it was the common intention of the parties to share the property for the benefit of both. A common intention can be proved either expressly, or alternatively, an inference can be drawn from the conduct of the parties. The question of what conduct is required to prove a common intention is an area of some debate, as the case law varies in this regard. On the one hand, it has in the past been argued that nothing less than a direct financial contribution will suffice. More recently however, in the case of *Stack v Dowden* in the House of Lords, the judges took the approach that the 'whole course of dealings' between the parties should be looked at. It was further clarified that by looking at the whole course of dealings between the parties, the court should be concerned with establishing the parties' intentions, rather than ascertaining what would be fair.

Many of those involved in this area of law believe that reform is long overdue, given that the principles of property law in these cases often do not tally with the social scenarios they attempt to formulate. A report by the Law Commission in July of this year suggested that cohabiting couples should not have the same rights as married couples, but that in certain cases they should be able to make a claim for financial compensation after a break up, based on what contributions they made to the relationship. The government is now considering those recommendations.

If you are intending to purchase a property with a partner, seek legal advice before entering into such an arrangement, clarify your options as to how best to protect your respective interests, confirm your intentions with your partner as to what should happen should things go wrong and speak to your solicitor about how best to formalise those intentions. Doing so could help lessen the necessity for any future litigation in the unfortunate event of a relationship breakdown.