

The Rights of Unmarried Cohabitants

GOODMAN DERRICK LLP

If you are considering purchasing a property with your partner, you should be aware of the recent House of Lords decision in *Stack v Dowden* and the Court of Appeal decision in *Fowler v Barron*.

There is now a presumption that when purchasing a property in joint names, the beneficial interest in the property is owned equally unless the contrary is proven. The practical consequence of this is that on separation, it is presumed that a property owned in joint names by the separating couple is owned as to 50% each. If this is not your intention, at the time of purchase or subsequently, it is advisable to execute a Declaration of Trust, to define each parties' share in the property.

If cohabiting couples have not executed an express Declaration of Trust and a dispute subsequently arises as to their respective interests in the jointly owned property, the burden of proof will be firmly placed on the party who seeks to show that the parties did not intend to hold the property in equal shares.

Each case will turn on its own facts as the court looks to determine the parties' true intentions. Evidence of financial contribution will be relevant but not determinative. The court will also look at advice taken and intentions at the time of purchase, the reasons why the property was acquired in joint names, the purposes for which the property was purchased, the nature of the relationship between the parties and whether they have any children; how the purchase was financed both initially and subsequently, and how the household expenses have been met.

It is important to be aware that on separation, a cohabitant does not currently have the same rights in property as a married person. Cohabitants are limited to issuing a claim under the Trusts of Land and Appointment of Trustees Act 1996 for a declaration as to their interest in a property. Unmarried cohabitants who have children can also make financial claims on behalf of their children under Schedule 1 of the Children Act 1989.

For more information about the consequences of the House of Lords decision for cohabiting couples, or advice on separation issues, please contact Claire Wood, a solicitor in our Family department.

If you are purchasing a property with your partner and wish to execute a Declaration of Trust, please contact Michael Collins, head of our Property department on telephone number 020 7404 0606 or by email mcollins@gdlaw.co.uk

This guide is for general information and interest only and should not be relied upon as providing specific legal advice.



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