

Who Gets the Family Home? (Enfield Independent)

Meryll Llewellyn-Jones, family paralegal, looks at separating co-habitees and the family home.

Family break-up is always difficult and when there is a property involved, things can get very complex indeed. This is particularly the case for the increasing number of cohabiting couples. Figures from the Office of National Statistics indicate that one in six couples living together are not married and this figure is likely to increase.



Most people assume that a property belongs to whoever is shown on the deeds as the owner. This does not always reflect the true position as sometimes the owner is holding the property on trust for others. As you can imagine, this allows plenty of scope for argument between couples upon separation about what was or wasn't agreed when they bought the property.

In the first flush of a relationship it rarely occurs to couples that they might split up, let alone what should happen to their property in the event they do. Without a written agreement, there can be long and expensive arguments about what should happen to the proceeds of sale.

In such cases, the courts will consider the intention of those involved. When one party claims a share in the property, the court will first ask whether there was an intention to share the beneficial interest in the property. If the answer to that question is 'yes', then the court will decide what the proportions of the couple's shares should be. Factors which will help substantiate a claim to a beneficial interest in a property will include:

- making a contribution to the costs of purchase;
- making a contribution to the mortgage;
- making a contribution to the costs of significant improvement works;
- making a non-financial contribution (e.g. working to renovate, improve or maintain the property);
- making an indirect financial contribution (e.g. paying other household bills so that the other partner can pay the mortgage etc.).

Above and beyond this, where there are minor children, the court will put their interests first. They will normally ensure that their accommodation needs are met until they reach the age of majority. This often happens when the mother and children live in a property which is owned by the father. Such arrangements may well involve a settlement into trust with the trust capital (the property) reverting to the father when the youngest child reaches 18, so the property is effectively lent to the mother as a place to live in while bringing up the children.

Entering into a written agreement at the start of cohabitation can clarify a couple's intentions and help to avoid disagreements in the event of separation.

For further advice on any area of family law, contact our specialist Family Law Team. A fixed fee interview, that is not time restricted, can be arranged for £75.00 plus VAT by telephoning 020 8370 2898 or by e-mailing markheselton@vanderpumps.co.uk.

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