



Family Department

Living Together - Shared Property Rights

Nowadays many couples live together without getting married or entering into a civil partnership. They may intend to marry at some time in the future or even be engaged to be married. Alternatively the relationship may be regarded by both parties as a long term or lifetime arrangement without the need for any further formalities. They may have children together, or children from previous relationships who live with them as part of the family.

However, if the couple make their home together in a property **which is in the legal ownership of only one party** this can cause problems if the relationship breaks down. The party without any legal ownership rights in the property may find they are effectively homeless and may have difficulties in establishing any financial interest in the property.

What is the relevant law?

The law does not provide any specific protection or safeguards for persons who live together but who are not married or in a civil partnership, no matter how long their relationship has lasted. As a result, if the relationship breaks down and the parties cannot agree a suitable arrangement between themselves, the Court can only deal with the dispute by reference to the law of trusts. This was not designed to deal with the property rights of persons who have lived together in a long term relationship, with all the complexities and personal “give and take” that may entail. So far Parliament has declined to enact any new legislation that might give co-habiting couples more specific legal rights.

The Court will therefore have regard to the provisions of the Trust of Land and Appointment of Trustees Act 1996 (TLATA 1996) when dealing with disputes concerning property interests.

The Court also has discretion to declare the rights of a party based upon the principles of trust law.

What is the basic legal position?

Trust law and the TLATA 1996 can be used to establish that you have an equitable right to a share in a property (or in its capital value or income) even if you do not legally own it or a share in it (ie your name is not on the title deeds or you are not registered as an owner or co-owner at the Land Registry.) This equitable right may arise in a variety of circumstances, such as:

- If you provided part of the deposit monies for the property purchase;
- If you made a significant financial contribution to the repair or improvement of the property;
- If you made regular or sustained contributions to the payment of the mortgage;
- If you made significant contributions to the household expenses (which enabled your partner to pay the mortgage etc).

There may be other matters or financial arrangements which the Court will consider in this context but generally it is necessary for the claimant to establish a financial contribution to the property or some other significant contribution which has a clear financial value (eg working unpaid on your partner’s farm or undertaking substantial renovation work on the property.)

If the claimant cannot demonstrate this type of contribution it may be very difficult to establish any right to a share in the relevant property. This might be the case if, for instance, you have spent many years at home caring for children or other family members or you have a much lower income than your partner which you have used for your own personal needs.

What sort of evidence is needed to establish an interest in the property?

Ideally the claimant should produce bank statements or other paperwork that support any relevant financial contribution made, directly or indirectly, to the property or the expenses associated with it. The claimant may also be required to

make a sworn statement or statutory declaration setting out the details of their claim and any supporting evidence such as photographs, household accounts etc. It is not always easy to provide independent and persuasive evidence of contributory expenditure or work, where there is no supporting paperwork (eg contributions to household expenditure made in cash.)

The Process

When you instruct us to act on your behalf in respect of a potential claim of an interest in a property in these circumstances we will take certain steps on your behalf, depending on whether you are the legal owner of the relevant property or the claimant:

- We will meet with you to take your instructions and obtain as much information from you as possible in order to advise you on the merits of your case;
- We will discuss with you the likely legal costs and our assessment of your chances of success to enable you to make an informed decision on how you wish to proceed;
- Where appropriate we will try to negotiate a settlement with your former partner (or via their solicitor or a mediator) without commencing legal proceedings;
- If it is not possible to reach a negotiated settlement we will consider alternative ways to try and reach agreement, such as mediation. If this proves unsuccessful we will discuss with you the possibility of issuing court proceedings.
- Court proceedings are complex and strictly governed by law. It is a rigid process and we would only issue proceedings as a last resort.
- We can continue to make offers to settle your case both before any claim is issued in court and during the proceedings. By making offers, we can try to protect your costs position. The court encourages the parties to make reasonable offers to settle a case. If the court considers that our reasonable offer of settlement was rejected, and you are eventually awarded more by the court, the other side could be ordered to pay your costs.
- We will advise you throughout as each case is very different and the way in which it is approached will depend on the individual facts.

This Guide is not intended to be comprehensive. It highlights and explains the common legal issues relevant to this topic. It should also help you to understand any steps we take on your behalf and the terms we and other professionals involved in your matter may use. Please read this Guide carefully and contact the lawyer dealing with your matter if you do not understand anything in it. We will not repeat the advice or information provided in this Guide when we meet you or write to you unless we need your specific instructions on some aspect of it.