

## **For better or worse.....**

Following a recent Court of Appeal decision, it is more important than ever that cohabiters consider how they wish to hold the legal title to a property which they purchase together. In so doing, whilst neither party may wish to think that the relationship may break down, it is of great importance that this is contemplated to ensure that each person's respective interests are safeguarded.



There are two types of ownership; legal ownership and beneficial ownership. However, legal ownership does not affect who is entitled to the proceeds of the sale of the home. This is governed by the principle of beneficial interest, which establishes the financial value owing to each person if the home is sold.

If only one person is the legal owner, the other (whether married, a civil partner or a cohabitant) may still be able to claim some of the financial value of the property. This is because he or she may have a beneficial interest based on contributions he or she has made to the purchase and/or it can be established that this was the intention of both parties when the home was bought.

If a couple are joint legal owners, this does not mean that they have equal rights to the financial value of the home. They may not have an equal beneficial interest in the property.

A written, signed declaration or a formal trust deed which indicates the parties' intentions about their financial shares will establish that a beneficial interest exists. If there is no formal statement, the existence of beneficial interest can only be established by applying to the county court.

However, following the above decision, it is clear that there must now be powerful evidence that the parties intend that their beneficial interests be different from their legal interests, and this is of even greater importance in the circumstances of unmarried occupants, but is easily addressed.

Your solicitor will typically address the question of joint ownership at the outset of a purchase transaction and be able to advise you as to the different natures of property ownership. As a result of the Court of Appeal decision, without a written agreement in place, in most cases beneficial interests are likely to match the legal interests no matter how unfair this may be. Should it be intended that these interests be different, a simple Declaration of Trust document can be entered into to evidence your intentions with regard to finance.

If you would like any further advice on this please contact Amanda Marwood who would be happy to advise you further.

 **Hayton Winkley Solicitors**

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