

Buying a house together? Understanding cohabitation and joint ownership



Cohabiting couples frequently misunderstand how the law applies to them. The most common misconception is that, somehow, you gain 'rights' by virtue of the length of your relationship. This is not the case. There is no such thing as a 'common law' husband or wife, in English law.

The law relating to cohabiting couples can, however, be quite complex and it's easy to see how confusion can arise when looking at property ownership.

When two or more people buy property together it is important that they understand the types of joint ownership available to them and decide on the method that suits them best, having taken into account all of the potential implications.

When a property is sold, all mortgages and charges have to be repaid in full, as will the estate agents and conveyancing fees on the sale. Only the remaining balance will be available for division between the owners. It is this balance that the joint owners must consider.

Unless the joint owners contribute equal amounts of money to the purchase, the person paying or contributing the larger share may wish to ensure that, when the property is sold, they receive a larger share of the balance than the other joint owner or owners.

With couples currently having to find quite large deposits, it is very common for these to be provided unequally, or with the help of family.

What should joint buyers look at before buying a property?

There are two key considerations:

Option 1: Do you want the property to be jointly owned so that you both have an equal interest in the property and so that, if one of you dies the survivor would automatically own the whole property?

OR

Option 2: Do you want the property to be jointly owned so that each of you owns a precise and specified share of the property and are each able to leave this share, by Will, to whoever you choose. If so, then do you wish:

- To own the property in equal shares?

or

- To own the property in unequal shares? (to protect any owner who is putting more money into the purchase than the other)

Option 1 is known as 'Joint Tenants' and Option 2 as 'Tenants in Common'. It is important that this is recorded at the time of purchase as it is usually only possible to arrange for this to happen later if all the joint owners agree (which is rarely the case when there is a dispute). Otherwise, usually it is only if the couple is married or in a registered Civil Partnership that a Court has power to change property rights.

Owners who buy as tenants in common will be advised to enter into a Declaration of Trust – a deed to set out their respective interests in the proceeds of sale and matters relating to this.

Importance of making a Will

It is very important that joint owners make Wills or update these at the time of a new purchase.

It is particularly important for a cohabiting couple to make Wills, whatever their choice of joint ownership. These can address practical issues like: Who is the executor with the right to make funeral arrangements? Who do the contents belong to? Is there any provision to pay off the mortgage? Who will benefit from life insurance? Can the surviving owner afford to pay a mortgage on their own? Can they stay in the home?

Wards Solicitors' specialist help

As part of our Conveyancing service our conveyancers will advise joint purchasers of joint ownership issues and prepare any Declaration of Trust.

Advice with regard to Wills and/or Inheritance Tax, or Lasting Powers of Attorney/Living Wills can be obtained from our Wills, Probate and Mental Capacity Team or contact Jenny Pierce on 0117 9292811.

Wards Solicitors also has a specialist Cohabitation Team. A couple who do not intend to marry or enter in to a civil partnership, may wish to consider a Cohabitation Agreement, an uncomplicated way of setting out who owns what and what would happen if the relationship were to end. It can be as detailed as the couple wish, covering contents, personal belongings, savings, pets and how much each person contributed to the mortgage deposit and subsequent payments.

Although a Cohabitation Agreement often incorporates a Declaration of Trust, this on its own will deal only with the shares held in the property purchased, how the proceeds of sale will be divided if the property is sold as well as things like who is going to pay the mortgage and in what proportions.

As well as advising on how cohabiting couples can protect themselves legally and financially when they move in together or buy a property, the Cohabitation Team can also help when things go wrong and there is no Cohabitation Agreement or Declaration of Trust in place.

We will always do everything we can to help settle differences by negotiation, mediation or, as a last resort, going to court.

For further advice with regards to Cohabitation or Cohabitation Disputes contact Lucia Mills or Claire Jones on 0117 9292811.

For more information as to joint ownership of property please speak to a conveyancer or contact Susan Ellis on 01275 850460.