

BENNETT GRIFFIN LLP
FAMILY NEWS
COHABITATION

The law regarding the breakdown of relationships of cohabiting couples is complex and confusing. This is somewhat surprising considering the number of couples in the UK who live together. Understandably, the last thing on your mind when you are busy finding a home together is what will happen to your property and finances should you break up.

The answer is it will be governed by the laws of contract, property and trusts. This is a complex and antiquated area of the law, and because of the discretionary powers of the judges under these laws, couples are left facing a degree of uncertainty should the relationship breakdown.

In 2007 the case of *Stack v Dowden* was heard by the House of Lords. This case attempted to provide some certainty in one area for cohabitants, but unfortunately this did not happen.

Stack v Dowden involved a couple who were both named legal owners of the property they lived in, but there was no express wording regarding their beneficial interests in the property. The judges held that the starting point is that if there is joint legal ownership, then there is also joint beneficial ownership, so the property proceeds would be split 50/50. However, the judges then went on to say this could be rebutted if one person could show the intentions of the parties were different in relation to the beneficial interest.

The case lists a number of factors which the court can take into account when determining how to divide the beneficial interest in the property. These do not just include the financial contributions made by the parties, but also include any discussions the parties had at the time of purchase, the nature of the parties' relationship and the purpose for which the home was acquired, to name just a few. In addition, the welfare of any children of the couple will be paramount.

In short, the judge will make a decision regarding how the beneficial interest in the property is held based on the circumstances of each particular case.

In addition, the law in this area is subject to change in the future. The Law Commission has written a report regarding cohabitation which suggests the law is in need of reform, and details various ways this could be achieved in the future.

If you are cohabiting and wish to avoid these uncertainties, it would be sensible to have a legal document drawn up without delay. We can draft a Declaration of Trust on your behalf which would define your intentions and specify how to divide the assets and property proceeds should your relationship breakdown.

The Declaration of Trust is a formal document which must be signed by both you and your partner once you have had independent legal advice. There must be no evidence of duress (bullying) by either party. Although the judge is not completely bound by the document, it would be clear evidence of the intentions of both of you, and there would have to be a good reason to depart from it.

Let us help you protect your interests and provide you with peace of mind. Planning in this way would also protect you from the potentially high legal costs of having to fight in Court for a fair division of the assets when the relationship has broken down.