

# WHY MOVING IN TOGETHER MEANS PREPARING FOR THE WORST

**T**here is an increasingly common scenario that I see which goes as follows: a couple who are not married have decided to live together and wish to purchase a house. For various reasons, one party provides a greater contribution to the purchase of the property (and in some cases, the only contribution), usually supported by a mortgage for the balance. The property is purchased in joint names with no declaration regarding shares or ownership. Time passes on, the relationship ends and the couple separate. At this point, the party providing the greater investment is shocked to learn that their contributions are not accounted for and that their share of the property is a simple 50%.

## So what's going on?

When purchasing a property in joint names, there are two ways in which you can own the property: as Joint Tenants or as Tenants in Common.

If you hold the property as Joint Tenants, you each own the whole of the property together. If one of you were to die, the survivor would inherit the property regardless of the contents of any Will.

This is often seen as a benefit which protects your loved one from having to jointly own a property with your beneficiaries should the unexpected happen. However, it does not take into account contributions and the view of the Court is that there is a presumption to own the property equally. This means when it's time to separate, each party will usually be considered to own half the property.

If you hold the property as Tenants in Common, you each have defined separate 'shares' in the property. You can define the respective percentages owned by each of you and your 'share' of the property will pass in accordance with your Will.

## So how do I protect myself?

Whilst separation is the last thing you want to be discussing when purchasing a property, it is important to have the 'what if?' conversation before you buy. If you are putting down a greater deposit, or are expecting to pay a greater share of the mortgage payments, it may be worthwhile considering how you wish to reflect this in your ownership of the property – especially if the funds are coming from a third party (such as parents loaning deposit monies).

Provided you hold the property as Tenants in Common, you can record your respective shares in the property in a legal document called a Declaration of Trust or Deed of Trust. This document would set out how any sale proceeds are to be split in the event that you separate, which can be as simple or as complex as required.

## I've already bought my property – is it too late?

Even if you've purchased your property, you can still take steps to protect yourself by preparing a Declaration of Trust and, if necessary, changing from Joint Tenants to Tenants in Common. This will require the agreement of the other party however, so it is best to approach this when the relationship is still amicable.

## We're separated. We previously agreed I would own a greater share but now my ex-partner wants 50% - is there anything I can do?

The Court has the power to determine the respective shares each party owns in a property where there is a disagreement. However, such cases can be complex and require evidence. The Court is primarily concerned with the parties' intention at the time of purchase, and if the property was purchased as Joint Tenants or as Tenants in Common with 50% shares each this will be evidence to the intention of an equal split. If you are concerned about the ownership of your property, it is always best to take legal advice. ■



Brian Fraser is a Solicitor at K J Smith Solicitors. Brian acts for clients in relation to all aspects of family law, including matrimonial, children and cohabitation disputes. His focus is on providing clear advice to clients to ensure the best outcome.

## THE DETAILS

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