

## Living together – who owns what when a property is shared?

The rules for determining how much of a shared home each party is entitled to on separation are very complex. The Government's advisory body on legal matters, the Law Commission, has just produced recommendations for reforming the law as it applies to cohabiting couples and has suggested new and less complicated ways of sorting out property matters at the end of a period of living together. However, until these recommendations are acted upon, the present system will remain.

If a shared property is in the name of one party, and the other party wants to establish an interest in it, there must be a lot of evidence to support the claim. The general rule is that an interest in property can only be given away in writing, but there are certain circumstances where this rule is relaxed. These are called "implied trust" situations.

The best evidence is having paid part of the purchase price or having made mortgage repayments (this leads to what is called a "resulting trust").

Alternatively, if the owning party has made promises that the claiming party relies on to his or her detriment or has done physical work on the property – or where there is a common intention that the property should be shared even though this was never put into writing – the claiming party may be able to show an interest (this is called a "constructive trust").

When a property is bought by two people together, the conveyancing solicitor will usually explain to the parties that there are two ways of owning property:

- a joint tenancy, where each party owns the whole of the property and where if either party dies the property will pass in its entirety to the other owner; or
- a tenancy-in-common, where shares in the property are set out clearly as percentages and each owner can leave his or her share by will to whomsoever he or she chooses.

Usually, the decision that the parties come to about this is recorded carefully on the transfer document and will be conclusive. Where there is an express declaration of trust like this, it is unlikely that anything that happens subsequently will be of any relevance to property interests.

In certain circumstances – for example, where there is no express declaration of how the property is to be owned on the transfer document – there is still scope for the court to consider the implied trust principles referred to above. The court may also look at the course of the parties' relationship and their financial dealings to see if it helps come to a decision about who owns what. But these circumstances, thankfully, are becoming increasingly rare as solicitors concentrate more on setting ownership details down clearly from the outset.

In order to get the court to look at these issues, there has to be an application under the Trusts of Land and Appointment of Trustees Act 1996. It is essential to get assistance from a specialist solicitor if you are considering this course of action.