

Unmarried couples who set up home together risk financial uncertainty on splitting up, if they do not make use of the legal safeguards available

A decision of the highest Court in the land, the Supreme Court handed down earlier this month, has again emphasised the importance of people considering setting up home together obtaining proper advice first. Many couples erroneously believe that if they live together for a specific period of time, they are entitled to the legal rights and remedies available to a married couple on divorce. However, despite calls for Parliament to introduce legislation to tackle this increasing problem, it has shown no real appetite to do so and has no plans to press ahead with reforms during this Parliament.

The case of *Jones v Kernott* is a cautionary tale. They met in 1981 and subsequently had two children together. In 1985 they purchased a house in their joint names. The price paid was £30,000.00, with a £6,000.00 deposit paid exclusively by the proceeds of sale from Ms. Jones' previous home. At the time of purchase the parties did not enter into a Deed of Trust declaring how their beneficial interest in the property was to be held.

The mortgage and upkeep of the house was shared between them until the relationship broke down in 1993 when Mr Kernott moved out. From that point onwards Ms. Jones lived exclusively in the property with the two children of the family. In 1996 Mr Kernott bought his own home. Over the years the value of the jointly owned property increased and in 2006 Mr Kernott indicated that he wished to claim a beneficial share in it. In response, Ms. Jones in 2007 applied to the County Court for a Declaration under Section 14 of the Trusts of Land and Appointment of Trustees Act 1996 that she owned the entire beneficial interest in the property.

At the original hearing in the County Court, the District Judge ruled that Ms. Jones should get 90% of the value of the house and Mr Kernott 10%. This

decision was upheld by the High Court Judge on appeal. Mr Kernott then took the case to the Court of Appeal which overturned the lower Court's ruling and declared that Mr Kernott was entitled to half the value of the house, because they owned it in equal shares when they separated and neither had done anything to change the situation since. Ms. Jones appealed to the Supreme Court which unanimously allowed the appeal and restored the Order of the County Court.

The principles that emerge from *Jones v Kernott* in cases where the family home is purchased in the joint names of the cohabiting couple, both of whom are responsible for the mortgage, but there is *no express Declaration of Trust* to record their beneficial interest in the property are as follows:-

1. The starting point where a family home is purchased in joint names is that the parties own the property as joint tenants in law and in equity;
2. The presumption can be rebutted by evidence that the parties' common intention was, in fact, different, either when the property was purchased or that the parties later formed the common intention that their shares would change;
3. The common intention is to be "objectively deduced" (inferred) from the conduct and dealings between the parties;
4. Where it is clear that they had a different intention at the outset or had changed their original intention, but it is not possible to infer actual intention as to their respective shares, then the Court is entitled to impute an intention that each is entitled to the share which the Court considers fair having regard to the whole course of dealings between them in relation to the property;
5. Each case will turn on its own facts;

6. Financial contributions are relevant but there are many other factors which may enable the Court to decide what shares were intended or fair;

This ruling by the Supreme Court should send warning bells to all unmarried couples who do not have sufficient safeguards in place to determine any dispute over property rights.

In every case there are two main documents that should be considered. First, in order to avoid uncertainty, and ensure that all parties who own a property together understand the basis of their ownership and their respective shares in the property, it is crucial that legal advice is taken at the outset and the parties' intentions recorded in an appropriate legally binding document. It is therefore usually recommended that parties buying a property together should enter into a **Declaration of Trust**. This records the parties' mutual intentions and recites their respective interests in the property and their rights and obligations in relation to it.

If, at a later date, the intentions of the parties change, it is crucial they seek appropriate legal advice with a view to varying the Declaration of Trust by entering into a new Deed which records their revised intentions and agreement.

The second document to consider is a Cohabitation Agreement. This is more extensive than a Declaration of Trust and can cover a variety of different issues that may arise from the decision to set up home together, for example, not just the division of property rights, but anything from joint bank accounts, pensions, furniture to children and pets.

If you would like to discuss entering into a Declaration of Trust, please contact Carter Bells LLP on 020 8939 4000 and ask to speak to either Monica Ward or Lucy Clark.

If require advice regarding drawing up a Cohabitation Agreement, please ask to speak to Frank Horder or Elaine Guy.