



# Unmarried Couples and the Home

If you are buying a house with your partner, it is important to decide what should happen to the property if you were to separate. While this is far from romantic and will probably be the last thing on your mind, it is vital if you are to avoid the risk of expensive legal complications later on.

## *My partner and I are splitting up - what happens to the house?*

Unmarried couples living together (cohabiting) have different rights to those within a marriage or civil partnership. If a marriage ends in divorce, the court will mainly consider the needs of each individual, rather than who owns what share of the house. For example, it often happens that a wife who has care of the children is awarded the family home, as her needs will be deemed greater.

This principle does not, however, apply to cohabiting couples. There is no such thing as a 'common law marriage.' Unless there is a cohabitation agreement or a Deed of Trust, unmarried couples have little in the way of rights specifically tailored to their situation. So if someone moves their partner into their house and they subsequently split, that partner may well have no claim upon the property, although it may be possible for the partner to argue that they have contributed towards the property finances, and so should have a share.

However, what happens if an unmarried couple jointly own a property? Unfortunately there is no simple answer, as the legal position is not clear cut. Ordinarily, if a couple own equal shares of a property, they will be entitled to an equal share of the value if it is sold. But the recent court case of Kernott v Jones has highlighted that this can be overruled if the common intention of the parties has changed.

The house was owned 50:50 according to the title deeds, when Mr Kernott moved out in 1993, leaving Ms Jones to pay the mortgage. As they did not then share the expenses of the property, the court said this meant that it was not "the common intention of the parties to hold the property jointly." Put simply, Mr Kernott had made less of a contribution, instead directing his finances towards his new home. The Supreme Court therefore ruled that his intention to jointly own their home had changed, meaning he had less of a claim over the property than the 50% in the title deeds. Ms Jones was awarded 90% of the property, leaving Mr Kernott with only 10%.

## *How to avoid a dispute*

What this ruling shows is that when it comes to dividing the homes of unmarried couples, there can be uncertainty. To help avoid this, it is wise to set out what will happen to your property if you split from your partner. Ideally, this will be done in advance of your purchasing a property.

## *What is the next step?*

*Please call **01242 235202** to speak to us, fill in the **free assessment form** on our website or email [family@davisg.co.uk](mailto:family@davisg.co.uk)*

**Davis Gregory**  
Solicitors & Notaries

25 Rodney Road  
Cheltenham  
GL50 1HX

Telephone: **01242 235202**  
Email: [family@davisg.co.uk](mailto:family@davisg.co.uk)  
[www.davisgregory.co.uk](http://www.davisgregory.co.uk)