

Law Watch

Who owns the house?



Research shows that more cohabiting couples separate without marrying, and fewer marry, than twenty years ago. Cohabitation remains a relatively short term type of relationship. At the tenth anniversary of moving in together, half of cohabiting couples have married each other, just under four in ten have separated, and slightly over one in ten are still living together as a couple, on the latest figures.



**Melanie Bridgen,
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This begs the question “Who Owns the House?”, when a couple live together but fail to marry or enter into a Civil Partnership before separation.

Most people wrongly think there is little difference between being married and living together.

Contrary to popular misconception, there is no such thing as a “common law marriage”. When such relationships break down, financial claims are largely dealt with in trust and property law. It will often be necessary to make an application to court in respect of that disputed property under the Trust of Land and Appointment of Trustees Act 1996.

Where a property is held in joint names the starting point is joint beneficial ownership.

When the property is held in the sole name of one person then the starting point is that they own the property absolutely. It can often be extremely difficult for the other party to establish an interest, especially where there has been no direct financial contribution or express intention, regardless of how long they have been living together.

The length of the relationship and the financial resources of the couple are not relevant considerations.

Furthermore, should the legal owner die the cohabitant of the deceased is not automatically a beneficiary under the Intestacy Rules but could apply for reasonable financial provision under the Inheritance (Provision for Family and Dependents) Act.

Where the couple have children claims for financial provision can be made under Schedule 1 Children Act for settlement or transfer of property orders for the children’s benefit but must be returned to the payer once the children have grown up, thereby giving only temporary relief.

What happens when the house is in joint names, the parties have been separated for many years and only one party has been responsible for maintaining payments on the property during that time? The Supreme Court will tackle this thorny issue when delivering judgment in *Kernott v Jones* (expected soon). This case should confirm whether the court can properly infer an agreement, after separation, that the parties’ beneficial interests in the property alter to something other than that recorded on the title documents.

It is always better to be wise before the event by setting out what your intentions are in clear, unambiguous terms. If you wish to protect your interests then it is beneficial to have your wishes and feelings properly recorded in a cohabitation agreement to cover arrangements during your lifetime and to prepare a will to cover what will happen in the event of your death.

If you require any further information please contact Melanie Bridgen on 01283 226444 melanie.bridgen@smithpartnership.co.uk. Melanie is a specialist family solicitor dealing with financial and children claims. She is a Partner in the firm, a member of the Law Society Family Law Panel (Advanced) and the Law Society Children Panel.

