

Co-habitation Disputes

Marriage v Co-habitation

The idea of a “common law” spouse is a myth. There are real and significant differences in how the law treats unmarried couples to their married counterparts. If a marriage breaks down, the courts have a whole range of powers to deal with the financial aspect of the separation and orders can include monthly maintenance payments, pension sharing orders and transfers of property. No such powers exist for co-habiting couples.

What powers do the courts have in relation to co-habiting couples?

Joint ownership of property:

If an unmarried couple own a property together, the Trust of Land and Appointment of Trustees Act 1996 gives the courts powers to determine the extent of each party's share in the property and the power to order the property to be sold. If the couple own the property as Joint Tenants, or Tenants in Common in equal shares then the Court assumes that each party is entitled to an equal share in the property. This is irrespective of the actual financial contribution to the property, unless there are exceptional circumstances to warrant an unequal sharing of the property.

Property owned by one party:

Often, a couple may live together in a property owned by one of them. When the relationship breaks down, the non-owning party may seek a share of the property. The law governing whether that person is entitled to a share is governed by the Trust of Land and Appointment of Trustees Act 1996 and the leading House of Lords case of Stack v Dowden. It is a complicated area of law with various rules depending on what contribution the other party made to the property as follows:

- **Direct financial contribution**
If the non-owning partner makes a direct financial contribution to the purchase price, or direct payment of the capital part of the mortgage, then the court is likely to give that person a share of the property in proportion to their financial contribution. This is called a Resulting Trust.
- **Common intention and Detriment**
If the court is satisfied the parties intended to own the property jointly – because there is an express agreement between the parties, or if the court infers this intention from the conduct of the parties, then the court is likely to give the non-owning party a share in the property. When looking at the intentions of the parties, the court will look for written or verbal agreement or for details of the parties' whole relationship including any contribution towards home improvements, upkeep and payment of utility bills by the non-owning partner. This is called a Constructive Trust and the share of the property to be given to the non-owning party will be determined by the court in the absence of agreement.

Court procedure under the Trust of Land and Appointment of Trustees Act

If, after negotiation and/or mediation, no agreement has been reached as to the ownership of the property or whether one person should buy out the other or whether the property should be sold, either party can make an application to court. The court has

power to declare the parties' shares in the property and to order the property to be sold, but no power to force one party to buy out the other's share.

An application is made to court, together with a detailed statement in support of the application. The other party will have the opportunity to prepare a statement in reply and the court will list the case for a preliminary hearing to narrow down the issues in the case and see if agreement can be reached. If not, the court will make directions to prepare the case for a final hearing. In complicated cases, this may involve obtaining statements from witnesses, obtaining the conveyancing files from the purchase of the property and getting a surveyor to value the property.

The court proceedings could take between 6 months and 12 months to conclude, depending on the complexity of the case.

When exercising its power, the court will consider a number of factors, as set out by s15 of the Trust of Land and Appointment of Trustees Act 1996. These include the intention of the parties and the purpose of trust – i.e. was the property purchased as a family home?

What happens when there are children living at the property?

Under s15, the court also has to consider the welfare of any children living at the property. Although this is only one of the factors for the court to consider, it may be possible to argue that the property can only be sold when the children are no longer dependant.

In addition, under Schedule 1 of the Children Act 1989, the parent with primary responsibility for the children (resident parent) can make an application to court for the other parent (non-resident parent) to make provision for the children. The court has powers to order lump sums payments; monthly maintenance payments to top up child support or direct to the resident parent; transfers of property and settlement of property. This is where the resident parent still owns the property but the resident parent and children live in the property to the exclusion of the non-resident parent until the children reach adulthood. At that time, the resident parent and adult children have to move out, as the property would revert to the non-resident parent.

An application to the court under Schedule 1 of the Children Act is started by completing an application form setting out the claim. The court will order both parents to complete a financial statement setting out their assets, income and outgoings. The court will encourage the parties to negotiate an agreement, but if not, will impose an order after hearing evidence from both parties. The court would look at all the circumstances of the case including the parties' and child's needs, how long the child will remain dependant, taking into account any disability and the parties' income and resources before making a final decision. Proceedings would likely take between 6 and 9 months to conclude.

What do I do now?

Oxley & Coward can offer confidential assistance and advice if you, or someone you know have any concerns and if necessary to take steps to obtain the relevant Orders to protect you. Call us now on 01709 510999 or email family@oxcow.co.uk