



When a married relationship ends, the Divorce Court in Ancillary Relief proceedings has the power of **adjustment**. This means it has a discretion dividing up matrimonial assets, and can adjust ownership between the couple on the basis of fairness.

When an unmarried relationship ends, the Court can only exercise a **declaratory** function. This means it divides assets (and, where appropriate, ordering a sale) on the basis of who already owns what, and not who **should** own what, no matter how long established the relationship or how deserving the Claimant.

However this is not always straightforward. In some situations, although one partner can be the sole legal owner of a shared home, the other partner **may** have a legally enforceable interest in the property. Similarly, two partners may jointly appear as legal owners of a home, but that does not necessarily mean that each owns an equal share.

### **Joint Ownership**

Where a couple own a home jointly, if they **expressly** state at the time of purchase what share each of them has in the property **and** this is properly and legally recorded, this will be binding on them (principally in the absence of fraud, undue influence or fundamental mistake). (Please read fact sheet on Cohabitation Agreement where appropriate).

Where no such express declaration was made at the time of purchase, the Court can decide what share each owner has, by taking into account evidence of intention and contribution (based for example on initial capital contribution).

### **Sole Ownership**

If the home of an unmarried couple is in the name of one Party only, the Other Party would have to establish an interest in the property by one of the following: -

- 1) **A Resulting Trust** - There is a legal presumption that if money is put into a property by a non-owning Party, then a proportionate share of the property is acquired. (provided that the conduct of the Parties appears to show a common intention to share the property). That contribution could be a direct contribution to the initial purchase price or to the mortgage. However a resulting trust can be rebutted by evidence of a contrary intention. For example if money put into the property is only a gift or a loan, no interest in the home is created.
- 2) **A Constructive Trust** - If both Parties to the relationship agree that the non-owner will have a share in the home **and** the non-owner relies on that assurance **by making financial contributions to the property**, then the non-owning Party may acquire a share in that property, usually dependent upon the degree of contribution. The contribution to the property might be a reduction of the mortgage debt, or substantial renovations or repairs to enhance the value of the property.

- 3) **Proprietary Estoppel** - This is similar to a constructive trust, where a non-owner relies on the promise of the owner to his or her financial detriment. Where the owner of a property makes a promise to the non-owner to give him or her a share of the property (or knowingly allows the non-owner to believe that he or she has or will have a share of the property) and where the non-owner relies on this promise (or deliberate misleading) to his or her financial detriment, the Court may believe it is unfair to prevent the owner from going back on the promise. This financial detriment could include, for example, a non-owner giving up his/her own council property which could otherwise have been acquired under the Right to Buy. It does not necessarily have to be expenditure on the house in question. However the remedy may be damages only, rather than a share of the house.
- 4) A “temporary” interest - If no equitable interest can be shown by the non-owner, a Property Adjustment Order could be made in favour of the children **of the relationship** temporarily whilst they are minors, in some circumstances.

### **Sale of the Home**

If you can establish that you have an interest or a potential interest in the home, Section 14 Trusts of Land and Appointment of Trustees Act 1996 gives you the right to apply to the Court for an Order declaring the extent of your interest, and whether the property should be sold and when.

The Court must principally consider (Section 15) principally: -

- 1) The purpose for which the home has been bought
- 2) The intentions of the couple
- 3) The welfare of any children who do occupy the property or could occupy the property
- 4) The interest of any secured creditor

Unless it can be proved that the shared reason for which the home was bought still exists, by and large, a sale would be ordered. That purpose might still exist if, for example, the property was purchased specifically as a home for the children. In that case it might be possible to defer sale until the children are no longer minors.

Alternatively, the Court could imply a “collateral purpose” by permitting a non-owning cohabitee reasonable time to find suitable alternative accommodation. The Court might be more persuaded to do this, if the needs of the non-owning Party were significantly greater than those of the owner, or if a reasonable delay would allow one Party to buy out the other.

### **Assets other than the home**

Where division of the contents of the home cannot be agreed, it is legally possible to make a claim for a declaration as to the beneficial interest each Party has in household chattels. However this could be an uneconomic cause of action, unless the disputed ownership is over assets of particularly high value.

*Dunn & Baker – Here to help you*

*Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.*