

PRESS RELEASE

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BEGINS

Fairness for unmarried property owners?

“Unmarried couples who buy a house together must make sure they have a written agreement setting out exactly who owns what” says Family law partner Julian Scrace of Wycombe law firm Reynolds Parry Jones, citing a recent Court of Appeal ruling where a woman was forced to hand over half of a house to a former partner, even though he had stopped contributing when he moved out several years previously.

The couple bought a house in joint names in 1985 and when they separated in 1993, Mr Kernott moved out, cashed in the endowment policy in his name which was intended to pay off his part of the mortgage, and did not make any more contributions to the household. Ms Jones carried on living in the house, paying all the mortgage payments and the costs of bringing up the couple’s children.

The general rule is that when a couple buy a property as joint owners, they will own a property in equal shares – unless they make a declaration to say otherwise. But when the couple ended up in Court, at both County Court and High Court hearings, the judges ruled that Ms Jones had earned herself a 90% share in the property, arguing that this displaced the general rule.

The case finally arrived in the Court of Appeal, where the judges disagreed, saying that only a clear declaration could displace the general rule. The Court said that the lack of contribution by Mr Kernott was not enough to override the general rule, concluding that the property still belonged to the couple equally, although one of the judges dissented and called for the law to be clarified.

“It may seem that the court went for certainty over fairness, but in both this case and in others, there were dissenting judgments. It shows that the courts are uncomfortable with this position, but for the time being the only safe option for an unmarried couple buying a property is to make things absolutely clear in a formal declaration of trust. And if the situation changes and one of them leaves the property, they need to agree and record any change in the shares” Julian Scrace went on.

“It is different for married couples because the Courts have wide powers to redistribute property between parties when they divorce; in contrast, when an unmarried couple splits up, the job of the Courts is to decide what each party owns, not how their property should be divided between them. I would advise all cohabiting couples who have purchased property jointly to seek the advice of a lawyer” he concluded.

For further information please contact Julian Scrace on 01494 525941.

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