

## Disputed Property Claim

### What is the difference between a legal interest and a beneficial interest in property?

A **legal interest** in property reflects who, in the eyes of the law, owns the property. This can be established by looking at the title documents for the property which will state who the legal owner is. However, a legal owner may not be the absolute owner of the property and may be holding it on trust for someone else.

A **beneficial interest** in property indicates what proportion of the property each owner is entitled to. Sometimes the beneficial interest will be the same as the legal interest. In those circumstances if a couple own a property together and they are both named as having a legal interest in the property, then they will both have an equal share of the beneficial interest. However, this is not always the case as property owners can agree that they own different shares in that property.

### My former partner owns the property we live in, do I have any interest in the property?

If your former partner is the sole owner of the property you live in this will mean that they have the legal title to the property. However, it may be possible to establish that they are holding the property on trust for both themselves and you.

The first step is to check the title documents for the property. If you do have a beneficial interest in the property, it may be recorded there. You may also remember entering into a Declaration of Trust with your former partner and recording your shares of the property when it was bought.

If you are not registered as having a beneficial interest in the property, this does not mean that you are not entitled to one. It may be that a beneficial interest can be implied using the principles of Trust Law. In order to imply a beneficial interest, you would need to show that:

- You had directly contributed to the purchase price;
- There was a common intention that you would have a share in the property and in reliance upon this agreement you acted to your detriment. This could mean, for example, you paid some of the mortgage instalments;
- Your former partner promised you a share in the property and you acted to your detriment upon that promise.

These principles apply to both married and unmarried couples. Each case will depend on its own facts.

## How is my interest valued?

The percentage of the beneficial interest you own may be recorded in the title documents to the property or on the Declaration of Trust. Your beneficial interest will be determined by the Court if you are unable to reach an agreement with your former partner.

## How do I show that I have an implied beneficial interest?

If no agreement can be reached with your former partner, an application can be made to the Court for an Order to declare your beneficial interest in the property.

An application can also be made for an Order for Sale of the property. This would allow you to realise your share of the property.

Whilst proceedings are ongoing, you can apply for an injunction to prevent the property being disposed of before the proceedings are concluded.

## What is the procedure for making an application to the Court?

Prior to any such application, it is necessary to do a Pre-Action Letter to your former partner. This is required by Law and failure to do so will render any such application as void. We would make the application to the Court. You will need to provide a witness statement detailing the extent of your claim, along with supporting documentation and setting out what you want the Court to do. This is then sent to the Court, who in turn serves it on your former partner. Your former partner then has 14 days to complete and return a form called an Acknowledgement of Service, which will state whether the claim is contested or not. They may also file a statement.

Once the Court receives your former partner's paperwork, the matter will be listed for a Case Management Conference when the Court will give directions as to how the case will proceed. The matter will then be set down for a Final Hearing to determine the outcome of the case.

We will advise you throughout this matter as to costs and timescales involved.