

Beneficial interest

In light of [Dobson v Griffey \[2018\] EWHC 1117 \(Ch\)](#), we revisit the principles of beneficial interest in property. This piece will consider the circumstances in which jointly owned property might be held in unequal shares, or where a person might have a beneficial interest in a property they do not own.

Ideally, the agreement will be in writing and will create an express trust of land. Agreements that are not in writing may take the form of a resulting, implied or constructive trust – [s53 Law of Property Act 1925](#).

Joint owners

The starting principles are clear. Where there are two or more legal owners, the property is owned by them all and the beneficial interest (in other words, the equity) is held on trust by and for each joint owner. There are no shares of the money, just as there are no shares of land. If the beneficial interest is to be divided because of something else, for example separation of a couple, the presumption will be that they intended to share the money 50/50, and intent is very important. If the shares of money are not intended to be distributed equally this should be made clear at the start.

For conveyances taking place since 2003, the solicitor for the purchaser must ask the question regarding shares of equity and explain the repercussions of each option. Those choosing to determine their shares are referred to as “tenants in common”.

Despite this option and explanation being compulsory, most purchasers still opt to be beneficial joint tenants. This may be because it allows for the operation of survivorship, where the surviving joint owner automatically owns the whole property on the death of the other without the need for a will or a grant of probate. Tenants in common should always take advice about who will inherit when they die.

If a joint beneficial owner wants to argue that their beneficial interest is more or less than half of the total equity, evidence of an intention to that effect will be necessary.

In [Jones v Kernott \[2011\] UKSC 53](#), the Supreme Court reiterated the principles in [Stack v Dowden \[2007\] UKHL 17](#), and together the two cases are the authority on establishing shares of interest. In *Kernott*, the court clarified that there is “no presumption of a resulting trust arising from a couple having contributed to the deposit (or the rest of the purchase price) in unequal shares”. It was the conduct of the parties - including Mr Kernott leaving the property some years previously and failing to help with bills and maintenance - that led the court to infer that the intentions of the owners had changed. Once the intention had changed, so could the shares of equity. Only then would financial contributions be scrutinised as a way of determining how much of the equity each joint owner was entitled to.

Sole owners

“The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. So in sole ownership cases it is upon the non-owner to show that he has any interest at all” – Baroness Hale of Richmond, *Stack v Dowden*

There are two ways of establishing a beneficial interest in a property where there is no legal title and no agreement in writing. The usual way is a **common intention constructive trust**. This requires the owner to have shared the intention that the non-owner should have a share of the equity. The non-owner should then act to their detriment, for example by making

payments towards the purchase price, paying for improvements or doing work on the property.

In [Williams v Lawrence \[2011\] EWHC 2001 \(Ch\)](#), the High Court held that the claimant did not own a share of a property after he conducted repairs and invested money in it. There was no intention to create a trust, and financial contributions alone were not enough.

The second way a person can have a beneficial interest they don't own is by pleading **proprietary estoppel**. This can be hard to establish, and it requires the reliance on a promise. In [Jennings v Rice \[2002\] EWCA Civ 159](#), statements made by a property owner to a handyman like "all this will be yours one day" leading him to work for free were enough to create a proprietary estoppel. When the proprietor died without a will the house and contents were sold. The deceased's family contested the handyman's claim for a lower sum, the case eventually reached the Court of Appeal and the handyman was awarded the value of the house and contents - almost half a million pounds.

Proprietary estoppel and other changes of position are considered in detail by Alexa Walker in IMA Quarterly Account – Issue 13.

Don't couples get awarded unequal shares in divorce?

The principles above apply to both married and unmarried couples, friends, family and occasionally even commercial relationships. The court might divert from the principles above if none of the contesting parties live in the property. Married couples going through a divorce might be awarded unequal shares as the family court can make property adjustment orders.

"In the case of a divorce, or dissolution of a civil partnership, the court has extensive powers to allocate to either of the parties assets belonging to either or both of them, as the court thinks fit, taking into account the criteria set out in the legislation" – Judge Paul Matthews, Dobson v Griffey

Prior to the case of [Hill v Haines \[2007\] EWCA Civ 1284](#), a consent order made in divorce proceedings could be set aside by a trustee in bankruptcy as a transaction at an undervalue. Lady Hale's judgment calls for certainty following a divorce and raises the possibility of "retaliatory bankruptcies" – where the party who received less than they would have wished could petition for bankruptcy, leaving the remaining joint owner in a very difficult position.

Fortunately, this case set a precedent where, absent fraud or collusion, the decision of the family court is binding even if it was made by consent.

The Specialist Debt Advice Service may be able to help you to identify cases where your client might hold an unequal share of money, or where they might have a share in the equity of a home they don't own. Determinations will often have to be made by the courts, especially in cases of proprietary estoppel. Legal representation will always be necessary. If you need to discuss a case with us, please have the following information available:

- What the client discussed with the other owner when the property was purchased and whether anything has been written down
- The reasons for holding the property in the manner they do. For example, was one of the prospective owners refused a mortgage?
- What has happened between the parties since
- What financial contributions have been made by the parties

- Whether either party has been adjudged bankrupt or had a charging order made against them.