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Cohabiting couples risk losing their home because of failure to decide ownership when purchasing property

∞ Growing use of bulk conveyancing firms fuelling problem

Cohabiting couples risk losing their share of a jointly purchased property by failing to declare how property is to be divided in the event of a break up, writes barrister Elizabeth Darlington, in a new book, 'Cohabitation and Trusts of Land', published by Sweet & Maxwell.

According to Elizabeth Darlington, all unmarried couples who purchase property together need to do is make a simple 'declaration of trust' by ticking a box on the Land Registry form, which clarifies how much of the property each partner owns.

However, couples are routinely making mistakes when completing the form, potentially putting their share of the property at risk.

Elizabeth Darlington says that couples are increasingly purchasing properties without adequate legal advice, which is compounding the problem.

Elizabeth Darlington comments: "Deciding who owns what percentage of the property is often overlooked, with the result that couples can end up facing far more pain and expense than is necessary if they break up."

"With greater numbers of people using online conveyancing firms, disputes could become more widespread."

She adds: "The carefree attitude a lot of unmarried couples have to buying property together is due in large part to the myth of common law marriage, which shows no signs of loosening its grip on the popular imagination."

Writing in "Cohabitation and Trusts of Land", published by Sweet & Maxwell, a Thomson business (NYSE: TOC; TSX: TOC), Elizabeth Darlington comments:

"A problem which is often encountered is where the couple have ticked the appropriate box on the form TR1 stating that the property is to be held as joint tenants but one partner has contributed a larger percentage of the deposit or pays a larger percentage of the mortgage. In this situation there is little that the courts can do and it may be necessary to consider bringing an action for negligence against the legal adviser who advised at the time of the purchase."

Elizabeth Darlington points out, however, that if a property is registered solely in one partner's name, but the other partner contributed to the mortgage and other items of expenditure referable to the property, that partner might still be able to claim an interest in the property – though possibly not without recourse to the courts.

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Notes to Editors:

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