

“Common Law Marriage” Is It A Myth?

It is often said that if you live with someone for a period of time, then a “common law marriage” may exist – this is a MYTH!

There are no Rules of Law if a cohabiting couple separate. Living with someone for a certain period of time does not mean that you are automatically entitled to financial support or to share property or pensions if the relationship comes to an end. This can cause great difficulties and on occasions, unfairness. For example:-

- A couple purchased a house together and separated after 10 years. One of the parties paid the initial deposit and paid further sums off the mortgage. The parties did not enter into a Cohabitation Agreement and/or a Declaration of Trust setting out their unequal shares in the property. As a consequence, significant legal costs were incurred as there was a dispute as to their respective shares in the property.
- A couple lived together for some time and they had two children together. Upon the relationship breaking down, the mother had to make an application on behalf of the children to continue to reside in the property until they were older to ensure that their housing needs were met. The Court decided that the house should be sold when the children attained the age of 18, which caused distress and anxiety to the mother as she did not know how her housing needs were going to be met at this time.

Consider a safeguard

A Cohabitation Agreement can safeguard against these pitfalls, and will generally cover three principle areas:-

1. Who owns what at the time of the Agreement and in what proportions. The parties’ respective debt positions can also be covered.
2. What financial arrangements you have decided to make whilst you are living together.
3. How property, assets and income should be divided if your relationship were to end.

The validity of Cohabitation Agreements have not been formally tested by the Courts. However, there is a train of legal commentary which concludes that providing the Agreements are drafted correctly, financial disclosure has taken place between you, that the terms are reasonable and each of you have had separate independent legal advice, a Court is more likely to uphold the Agreement.

Under the current proposals, if you have an agreement about what you want to happen in the event of separation this would take precedence over any new scheme.

Advantages of a Cohabitation Agreement

- Minimize Legal Costs and Certainty - If a dispute arises upon separation.
- Preservation of Assets - it is a well told story that it is difficult for first time buyers to get onto the property ladder. They have to save longer for a deposit or may choose to pool their resources with those of their partner in order

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to purchase a property together. With this in mind, it is becoming increasingly common for parties to enter into a Cohabitation Agreement setting out their respective interests in a property.

- Protect Gifts/Inheritance - if parents have gifted, loaned or invested funds to enable their child to acquire a property, the parents may wish for a Cohabitation Agreement to be entered into to protect the family money.
- Previous Settlements and Protecting your Children’s Future Inheritance - People who have been involved in a relationship breakdown, are more aware of the financial repercussions of a relationship breaking down and wish to safeguard their own financial security as well as their children’s future inheritance.