

COHABITATION – PITFALLS FOR THE UNMARRIED COUPLE!

Many couples do not wish to marry for a variety of reasons – this may be that they have previously had a bad experience or failed relationship and do not wish to enter into marriage at the present or for the foreseeable future; because they are of the same sex and do not wish to enter into a civil partnership; they may already be married to another person and their divorce may not have been finalized; they are happy as they are and have not thought about marriage.

Whatever the situation there has been a huge increase in the number of couples (be they of the same sex or otherwise) living together over the years.

For couples co-habiting together it is rarely the case that they enter into a Co-habitation agreement prior to co-habitation itself. This is usually because they simply have not thought about it or consequence of what might happen if the relationship breaks down. When starting a new relationship the last thing they often think about is protection if things go wrong.



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Unmarried couples face significant issues when the relationship breaks down and this can lead to considerable problems in the division of any assets held, particularly property. If you do not have a written agreement prior to cohabitation then do not fool yourself into believing that you have “a common law marriage”. There is no such thing.

There are steps which you can take to protect yourself and your partner and protection may also be required for the children of your relationship. Many issues can arise and some of them are as follows:-

- Your former partner does not have to pay you maintenance for yourself even if you have given up work to look after the children or the home and their only liability got maintenance will be in relation to child support;
- Be aware of how your family home is held. If it is rented and your name is not upon the tenancy agreement then you may be forced to leave the property even if you have the children with you;
- If you have savings held in an account that is not in your joint names but held by your partner, then you may find that you are unable to obtain any of that money and it is essential that you are able to ensure any jointly held monies are quickly dealt with before they are acquired by your former partner & it is too late to access them;

- If you are the father of your children and you are not registered with the mother on the Birth Certificate up to the 1st December 2003, you will not automatically acquire parental responsibility;
- If your partner does not have a Will, you will not automatically inherit upon their death and this includes the former home if it is held in their own name or jointly as tenants in common;
- If you purchase a property together in your joint names, you must ensure that you discuss with the solicitor acting “at the time of purchase” how that property is to be held. If you or your partner inject substantial capital into the property purchase (for example from the sale of a previous home in one or other of your names) then unless you have a Declaration of Trust or a written agreement as to how those funds are to be taken into account, and the property is held by you jointly in equal shares then, irrespective of what sum you have put into the property you will not be able to recover it in due course and this can lead to considerable problems arising.
- If you are unable to resolve your property issues then you would have to make a formal application to the Court. This can often involve expensive, lengthy and protracted litigation yet all of this can be avoided if you seek protection in the first instance. This is a complicated and specialised area of the law and there are rights that you can ask the Court to convey to you in relation to the property and issues arising out of the breakdown of the relationship.
- If you have children and are not married, there can be additional help for you under The Children Act whereby you can apply for child maintenance if the CSA has no power to deal with the case, maintenance on top of the maximum CSA Assessment if the paying parent is a high earner (e.g. earning over £2,000 per week net and you can also ask the Court to postpone any sale of jointly owned property until your children have reached majority). You can also apply for maintenance to pay for costs in relation to disability or for private education of your children. The Court has wide ranging powers in this regard but be sure that you seek expert help in taking the appropriate steps to protect yourself and your children.
- You can apply for non-recurring lump sum payments to purchase such items as furniture, appliances and the like and the settlement of money on trust. Be aware however that even though the Court can postpone a sale until the children have reached majority, ultimately that property will be sold and the other party will then be entitled to their share at that time.



The above is just some examples of the pitfalls and problems which can arise. The bottom line is that you need protection for the short and long term future. Make sure you know all the choices open to you. Lowe’s can offer specialist advice in this regard. For further help and assistance please contact Tracy Lowe



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