

Common belief - costly mistake?

– a legal angle on the status of common law spouse

These days more couples are choosing to co-habit rather than marry. There is no reason why those relationships should not be successful. There is also no reason why the heartache at the end of a relationship should be made worse by arguments over the ownership of property or relationship with children.

Stephen Parry Jones at Whittles solicitors, who answers our reader's questions in this issue, believes that most problems arise because of the myth of 'common law marriage.'

Q. What is a 'common law marriage'?

Common law marriage does not exist in England & Wales. Couples do not acquire rights in a property no matter how long they have been living together. There is very little protection given to co-habiting couples if the relationship breaks down. Unlike a marriage, when a co-habiting relationship breaks down, it can be almost impossible for one partner to successfully claim a share in an asset, i.e. the house in which they lived together, owned by the former partner.

Q. What about the children?

The law relating to children is the same for cohabiting couples as it is for any other unmarried parents. The only parent to have automatic parental responsibility for a child is the mother. Parental responsibility is defined as "all the rights, duties, powers, responsibility and authority which by law a parent of a child has in relation to the child and property." An unmarried/cohabiting father can obtain parental responsibility in one of three ways:-

- (a) If the father's name is on the birth certificate the father will have parental responsibility for children born after 1st Dec. 2003.
- (b) If the parties can agree, they can enter into a Parental Responsibility Agreement.
- (c) If the parties cannot agree, then the father can apply to the Court.

Q. What are my rights after the relationship ends?

The law in this area is complicated and is based on the Law of Trusts. A person claiming an interest in a former partner's asset may often have to prove contributions made by that party to the property or rely upon discussions between the parties many years previously. Ultimately it could be one party's word against the other. If agreement cannot be reached between the parties then an application can be made to the Court for a declaration as to what interest a party may hold in a property where they are not registered as the owner. In some cases the court can be asked to order a sale so that interest can be realised.

Q. How do I protect my rights?

At the start of the relationship, when one party moves into a property owned by the other, a Co-habitation Contract should be considered. It is not guaranteed to be recognised by the courts but does represent a written understanding of what the couple have agreed will happen should the relationship break down. There is no limit as to what can be included in such an agreement and it can include who is to pay the bills, maintain and furnish the property, whether the non-owner is to have any interest in the property, and the period in which, and method by which, the property owner can require the non-owner to vacate the property, should the relationship fail.

Q. What about the house?

This should be considered whether co-habiting couples are purchasing a property together in joint names or if the party who already owns the property decides to transfer its ownership into joint names in return for a monetary investment into the property by their partner. If the property is to be held in the names of both parties then should it be as 'joint tenants' or 'tenants in common?' If held as joint tenants then it will be assumed that each party has a

50% interest in the property. If held as tenants in common, the parties can enter into a Deed of Trust, explaining the interest each party is to have in a property. Without a Deed of Trust it is assumed that any property registered in the joint names as Tenants in Common is held in equal shares.

Q. What happens when I die?

When a property is held as 'joint tenants' the 'Rule of Survivorship' applies. This means that should one of the couples die, the property will automatically pass to the sole ownership of the surviving partner, irrespective of any Will they may have left.

If the property is held as Tenants in Common, either party can leave their interest in the property by Will but this can lead to problems. What if a beneficiary receiving the deceased

partner's share in the property wishes to realise their interest in that property and the surviving partner cannot afford to purchase their share? In that case a sale may be the only option. This may not be what the deceased partner had intended. Wills are absolutely essential for co-habiting couples, and without them, the law does not presently recognise the surviving partner as the next of kin. Sadly, they may receive absolutely nothing in terms of financial assistance unless their interest in the property has been adequately recorded.

To discuss any of the above or any other relationship, family or marital legal query, please contact Stephen Parry Jones at Whittles solicitors on 0161 228 2061. 1st appointment free.



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