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FAMILY LAW SERVICE

LEAFLET NO.5 – LIVING TOGETHER

Introduction

Living together outside of marriage or civil partnership is on the increase. Despite this, there are many common myths.

- There is no such thing as a 'common law ' wife or husband. This was abolished in 1753 although the term is still used by many people and even by the press!
- You get no rights in property merely by living together, no matter for how long.
- Neither partner has a right to maintenance from the other.
- Fathers of children born outside marriage have no automatic rights as fathers. Unmarried fathers do not have Parental Responsibility (see our Children Act leaflet for more information).
- You may not inherit any of your partner's estate if he or she has not made a Will leaving you something.
- You may have no right to a share in the home if your name is not on the deeds. Caring for the home and family, helping to run your partner's business or sacrificing your career make no difference to your property rights.
- If a property is held in joint names, you may be deemed to have equal shares in the property even though you have made unequal contributions.

Walking away is not as easy as claimed. Most people do not keep their property and money separate. It can be more complicated to untangle this than for a divorcing couple as there is no special framework to help the court divide property fairly unless you are actually married.

What does this have to do with me?

As Solicitors specialising in Family Law, we often see people whose living together relationships have come to an end. It is only then that most people realise that their rights to the house, the contents

or money are not what they thought. By then it is too late to change this. At times of great emotional stress they are faced with uncertainty.

You can avoid this danger if you are aware of your legal rights and organize your affairs accordingly.

You can take steps to protect your position. For example, when you buy or rent a house or flat together you should spell out your shares, rights and obligations. This can be done quite simply in a legally binding form.

You can also make legally binding promises to each other about mortgage repayments, bills, life insurance, pension provision and wills. This is best done in a Cohabitation Agreement.

This is a specialist area of law and one with which even some family solicitors have difficulty. Steve Kirwan, Solicitor, is one of a number of nationally recognised specialists accredited by Resolution for Cohabitation work and can be contacted on 01785 273141.

What is a Cohabitation Agreement?

More and more people in this position are choosing to enter into a cohabitation agreement. This is a formal document, usually prepared by a solicitor, in which you and your partner can properly define your financial relationship with each other.

You live with a partner but are not married to each other or in a registered civil partnership. Although you trust your partner, you may still want the peace of mind and security that comes from being sure of your position, now and in case things go wrong between you or if one of you should die.

This may not cost as much as you think. It will certainly cost a lot less than trying to sort out the complicated legal and financial mess that may result if you do not do so. We can give you a free quote.

What if we are buying a property together?

More and more unmarried couples are buying flats and houses to live in together. Many do not realise that buying the house in the name of just one of them or buying 'in joint names' can be asking for trouble in the future.

The law says that your legal rights in the property depend on your intentions at the date of purchase. If those intentions are not properly recorded, much time and money can be spent later in legal

arguments about them. The Court cannot alter these rights, no matter how unfair this may seem.

It is important to understand that even if you make an unequal contribution towards the purchase price, you will now be considered as having an equal interest in the property unless you have made an express agreement to the contrary, save in the most exceptional of circumstances, and would therefore be entitled to an equal share if your relationship has broken down.

The Law Commission has recommended reform in this area of law, which it acknowledges is uncertain and often produces unfair outcomes for former partners who are in dispute. Litigation is very expensive and will often turn on a single Judge's understanding of the facts of your case and of the current law.

When you buy a property together it is therefore important to spell out precisely what you intend about who owns what, who should pay what and who should get what if you separate or if one of you dies.

You may think it 'unromantic' to have a formal legal agreement when you are living together quite happily. Quarrelling about money matters is unromantic too and knowing just where you stand can avoid a lot of quarrels. You should remember that all relationships come to an end one day - either because of your separation or the death of one of you. It makes sense to spell out your rights.

What can we include in a Cohabitation Agreement?

The choice is yours. Some couples may wish their financial affairs to be more tightly regulated than others. You might consider including the following:

- Your shares in any home or property, whether bought before or during your relationship
- Who owns what among your existing possessions
- How you are going to pay for and who is to own the possessions bought while you are living together
- Who pays the mortgage and other bills and how
- Whether you have a joint account and how this is to be operated

- What you would do with the property if you split up; provision for one of you to buy the other out and so avoid a sale
- How you would split up your possessions on separation
- Provision for life insurance to cover each of you against the financial consequences of the death of the other
- Provision for pension contributions; whether and how far any pension benefits are written in trust for each other
- Mutual wills
- Provision for review of the agreement
- Whether the terms of the contract would continue if you married each other, entered into a civil partnership or had any children
- Providing for arbitration rather than Court proceedings to resolve disputes

Need for advice

If you are living together or thinking about it, you should consider taking legal advice - especially if you are buying property together or if, as is likely, your finances will become mixed.

To avoid future problems you should think about and discuss the financial aspects of your relationship.

Provided that you and your partner are in agreement as to your intentions, an agreement can be prepared at any time, even if you are already living together.

How do we go about it?

When you have agreed on your relationship, money, property and aims, you should come in together and discuss your situation with us. It will probably be necessary to bring your deeds and any existing wills.

If your intentions are adequately recorded in those documents, you may not need to take any further action. If this is not the case, you may need to have one or more of the following:

- A Cohabitation Agreement. This can be tailor-made to suit your personal circumstances.
- A Deed of Trust. This may be required to deal with ownership of the property, for example by setting out the shares that you each have.
- A Will and Enduring Power of Attorney for each of you .

NOTE: The above is intended as a general guide for your information. It is NOT intended as a substitute for proper legal advice. Each case is different and advice cannot be given without a proper analysis of your own circumstances.
