

The Legal Aspects of Living Together

What are the Legal Ground Rules?

We are increasingly being consulted by couples who have lived together but never married regarding the problems that arise when their relationship breaks down. The reason is simple; while in many other countries their status is legally recognised, in England and Wales the law has not kept pace with social change. Some laws do cater for the unmarried relationship, but generally the approach of the law for those living together, unmarried (co-habitees) is unsatisfactory. This makes legal advice especially important.

Few couples living together give any serious thought to the legal consequences of their decision to cohabit until a crisis arises in the form of the relationship breakdown, the death of their partner, or perhaps possession proceedings. There are many myths and misconceptions about "common law" rights that are widely thought to exist. Many people believe that after they have lived together for a certain length of time they acquire some special status that gives them rights similar to those of a married couple. This is incorrect.

Many couples may be reluctant to attempt to formalise in any way an arrangement, the basic attraction of which may lie in its very informality. They would however be well advised to consider the underlying aspects of shared property, the strong advisability of making a Will and financial arrangements.

This is because it is important to establish some ground rules for what should happen should they separate, or should one party die. Future problems can be anticipated and reduced by addressing these matters through a co-habitation or "living together" contract. What guidance can be given to co-habitees who wish to safeguard their position and agree on arrangements?

Property Rights

Co-habitation contracts can be used either to confer rights which the parties would not otherwise have, or make it clear that they have none. It can also be produced as evidence of their intentions. Most property disputes will either relate to

home ownership, or rights to continue to occupy accommodation. In our experience, disputes between unmarried couples about ownership of, or rights in, property whether in joint names or in one, or relating to rented accommodation, can frequently be extremely difficult and expensive. It is often advisable to consider at the outset signing a Declaration of Trust (which can be prepared at a reasonable cost) to provide for what is to happen in these circumstances.

Assuming a home is to be jointly owned, problems can still arise when one party wants to sell and the other wants to remain living in the home. In the absence of any documentary evidence, parties have to rely on the provisions of the Trusts of Land and Appointment of Trustees Act 1996.

These are limited and do not enable the court to alter property rights. Although matrimonial law protects spouses, it only offers protection of rights in respect of a jointly owned property for co-habitees.

As to personal possessions, co-habitees keep what they owned when they entered the relationship, and anything acquired while the couple were living together belongs to the person who can prove they bought it. When a relationship between an unmarried couple breaks down, their rights are mostly governed by individual financial contributions.

Parental Responsibility

An unmarried father does not have parental responsibility for his children unless he is named on their birth certificates on or after 1st December 2003. Where an unmarried father does not have parental responsibility it means the mother can make all the important decisions about the children's upbringing without having to consult the father.

A co-habiting couple can enter into a Parental Responsibility Agreement (prepared at reasonable cost) to give an unmarried father "parental responsibility" with the mother. This is particularly important as it will enable an unmarried father to apply for residence in the event of the mother's death

and give consent to medical treatment.

An unmarried father's financial obligations to his children are exactly the same as a married father's obligations.

The Importance of Wills

Wills are indispensable to co-habiting couples wishing to leave property to the other, in order to make clear declarations as to ownership, which can be flexible and provide for future contingencies.

The reason is that, as far as inheriting property is concerned, the position for married and unmarried couples could not be more different. If no Wills exist and a couple are unmarried, the surviving partner receives nothing at all, unless they are successful in bringing a claim under the Inheritance (Provision for Family and Dependents) Act 1975. The children of the parties are however entitled to inherit under the rules of intestacy and it makes no difference that the parents were unmarried.

Financial Arrangements

There is no duty on one co-habiting partner to maintain the other and therefore until recently no right of financial maintenance. However since 1 January 1996, a surviving unmarried partner can claim financial provision from a partner's estate if they co-habited for two years before death. Nevertheless, the formula for calculating the level of provision is still less generous than for surviving spouses. The children of co-habitees are also entitled to claim maintenance from either or both parents.

How can Warners Help You?

Unmarried couples living together may be concerned that formalising these arrangements could jeopardise their existing relationship by suggesting a lack of trust.

However, co-habitees can pay a high price for failing to consider fully the implications of their relationship. This only adds to the distress already suffered by a relationship breakdown or the loss of a loved one. At Warners we are well placed to advise on the options available.