

Cohabitation agreements – the myth of the common-law spouse

Case-study – Barbara and Ken

Barbara and Ken have lived together for 25 years, although they have never married. Their two children have grown up and moved away. Ken has just announced that he has met Sandy, and that he plans to leave Barbara and to make a new home with Sandy.

Ken manages a chain of pubs. Barbara has not worked since the children were born, though she has carried out all the household tasks throughout the relationship. The family home is in Ken's sole name, and he has paid the mortgage off from his income over the years.

Barbara wants advice about what she is entitled to, as a 'common-law spouse'. She wants Ken to pay her maintenance, and to have half of the value of the house to enable her to start again on her own.

The myth of the common law spouse

- Advising a woman (or a man) in Barbara's position is one of the hardest jobs for the family lawyer.
- If Barbara and Ken had married, Barbara would be entitled to a fair share of the family wealth to enable her to buy her own home. Given the difficulty of finding work after many years as a mother and home-maker, she would probably also receive maintenance as well.
- However the 'common-law spouse' is a myth – and in the example above, Barbara has no entitlement to maintenance from Ken, or to a share of the house.
- Barbara would only be able to claim a share of the value in the house if she had contributed directly to it, for example by paying towards the deposit put down on buying the house, or by funding improvements to the property which have added to its value.
- If Ken had promised Barbara a share in the property in the event that they split up, she may be able to argue that Ken is bound by this promise, although it will be far from straight-forward for her to do so.

Claims for children

- If Barbara and Ken's children had been younger, and still dependent upon them, Barbara would have been able to make claims against Ken on their behalf.
- Barbara would have been able to claim:
 - Child support for the children through the Child Support Agency.

- Provision for school fees, or for the costs of children at university, through an application to court.
- She might also possibly be able to claim a transfer of the house to her, or capital to provide a home for the children (and herself), while the children were in education. On the children leaving home, however, the financial provision would end.

Claims on death

- If, instead of the relationship breaking down, Ken had died, Barbara would have been able to claim a share of the estate to meet her reasonable needs for maintenance.
- Where a couple have been living together for at least two years prior to death, the surviving partner can claim against the estate for funds sufficient to provide for their maintenance needs.
- Note that where one of an unmarried couple dies without leaving a Will, they will not automatically inherit all or part of their partner's estate under the 'Intestacy rules' (as a spouse would). It is therefore very important that unmarried partners each draw up a Will in order to provide for their partner in the event of their death.

Specialist advice

- While many believe the current law to be unfair and unjust, and change is arguably long overdue, developing the law to protect unmarried couples is generally not politically popular, and has been argued to undermine the institution of marriage.
- Laws designed to protect the position of cohabiting couples are now in place in Scotland.
- Given the severely inadequate protection currently provided by the law in England and Wales to cohabiting couples, taking specialist legal advice is essential.

Holding property

- Where property is to be held jointly by an unmarried couple, it is vital that the interest of each partner is legally recorded either by:
 - the legal title (kept at the Land Registry), showing the interest of each of the couple, or
 - a 'deed of trust' being drawn up to record how the value in the property is to be shared between the couple.

Cohabitation agreement

A cohabitation agreement can :

- record the contributions made by each partner to the family home, and to any other property they may own.
- Set out how the couple's belongings are to be owned. For example, the agreement could record how any cars, furniture and other belongings are to be held, and how they are to be divided in the event of a separation.
- Provide how the finances are to be managed on a day to day basis while the couple lives together. For example it can set out who pays the bills, and how the mortgage payments are to be split.

A cohabitation agreement should be:

- made by deed
- finalised only after each partner has received specialist legal advice
- made without undue pressure having been placed on either partner to enter into the agreement.

Conclusion

Until the law is changed to provide adequate protection to unmarried couples, it is vital for all unmarried partners to seek specialist legal advice on their financial position.

In particular, each partner's interest in the family home (and any other property) should be properly recorded. Wills should be drawn up setting out how the partners wish to provide for each other on their death. Unmarried couples should also consider and take advice upon drawing up a cohabitation agreement.

For advice on the legal issues arising from cohabitation contact AMD's team of specialist family solicitors at:

Henleaze Office –

Alison Dukes – Director
Anne Thistlethwaite – Senior Solicitor
John Todd – Senior Solicitor

100 Henleaze Road
Henleaze
Bristol
BS9 4JZ
0117 9621205

Shirehampton Office –

**Rebecca Isaac – Solicitor
Chris Brown – Senior Solicitor**

2 Station Road
Shirehampton
Bristol
BS11 9TT
0117 9235562

Website –

www.amdsolicitors.com