

THE SHIRE MAGAZINE

SEPTEMBER 2006

COULD THE MYTH OF COMMON LAW MARRIAGES BECOME A REALITY?

With the Government currently reviewing the legal rights of cohabitants, Ainsley Pritchard Head of the Family Department at Branton Bridge Solicitors looks at the possibility of individuals gaining rights to share in their partner's assets on separation.

For years people have talked about common law marriages with many believing that they exist. People think that after a certain length of cohabitation a common law wife or husband obtain rights over their partner's wealth. However, research shows that people have different misconceptions of what the time limit for this is or even what their rights are.

This is because common law marriages are in fact a myth. They do not exist. Sadly this can result in confusion for many couples who live together, often only finding out the reality on separation. Unmarried couples do not have a legal duty to support their partners financially either whilst together or after they separate unlike married partners. They do not automatically inherit their partner's wealth on their death. Couples who live together do not automatically have a claim on a house owned by one of them after a certain length of time. The length of time they have been living together makes no difference because there is no automatic right to remain in the property. Complex legal issues need to be proven to even try to establish an interest. You could live with someone for 20 years and still have no claim.

This has previously led to hardship for many people in this situation who did not know the realities and found they had no legal remedies available to them. With the number of couples living together rising, the Law Commission has been asked to prepare a report as to whether this should be changed and to look at whether unmarried couples should get rights on separation or if their partner dies. The final recommendations are due to be put before Government next year.

The report looks at whether cohabitants should obtain rights after living together, whether this should be conditional upon certain events or timescales and what, if any, financial claims they should be able to make. Entitlement to claim maintenance claims against pension rights and what should happen on the death of a partner are some of the areas being closely examined.

Many lawyers are recommending that any rights should only be acquired after a certain length of cohabitation and should be less generous than for those couples who are married. Whilst the final recommendations are not due until 2007 with any implementation likely to be 2009, many people are already looking at what potential impact this will have on marriage itself.

Many believe this review is long overdue and a change in the law will protect partners who are currently very vulnerable. Others believe it strikes a blow at the sanctity of marriage and obtaining rights without entering into some kind of contract is wrong.

It also raises the question of how it could impact on the number of people who choose to marry. Will it result in an increase in marriage, a decrease or make little difference? People who have previously avoided getting married, partly to avoid becoming financially embroiled with their partner and in an attempt to protect their own financial wealth may find themselves open to claims whether or not they entered into a marriage in the first place. As a result (and knowing their partner may make a financial claim whether they are married or not) may result in more people taking the plunge.

Alternatively, will less people get married and rely on any new rights they have as a cohabitee, safe in the knowledge that if the relationship breaks down they will be protected financially with or without having got married?

Whatever the outcome of the proposals, it is evident that people in these situations need to know what their rights are, before living with someone. Knowing your rights enables you to plan and financially prepare and can avoid people finding out the hard way as often happens.

What is more likely to happen is an increased demand for legally prepared cohabitation agreements, especially for those people who want to be sensible in their financial planning. The call for both these and pre nuptial agreements for people who do get married to become legally binding (they are not at present) will increase. If they do become binding it will surely minimise uncertainty regarding financial arrangements on separation.



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Aaron & Partners

Whether or not the government's plans for cohabitation rights come to fruition, you should always seek legal advice prior to getting together or splitting up, particularly if there is a significant imbalance in personal wealth. Aaron & Partners LLP has 2 partners who are hugely experienced in family law.

So click online at www.aaronandpartners.com or call 01244 405555 and ask for Lorraine Saunders or Trefor Jones.

Pannone LLP

Cohabitation is increasingly prevalent and by 2031 one in four heterosexual couples are expected to live together outside marriage as opposed to the current one in six. Serious issues of inequality arise when such relationships breakdown and must be addressed if the law is to keep pace with social change. At present there is no automatic legal right to a financial settlement outside of marriage. This is an issue which is now correctly being addressed.

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Laytons

According to the National Statistics Office, between 1996 and 2004, the number of cohabiting couple families increased by over 50%. However, the Law as it currently stands often leads to injustices for cohabiting couples who are neither married nor have entered into a Civil Partnership, should they separate or their partner die. Reform in the Law is currently being considered and it is hoped that changes will be introduced to protect the vulnerable in such situations. Nevertheless, it remains imperative that legal advice is sought at the outset so that both parties can be fully informed of their rights.

Patricia Robinson, Associate Partner, Laytons Solicitors, 22 St John Street, Manchester, M3 4EB. Tel: 0161 834 2100.

Cobbetts

"Reform of the law to protect cohabiting couples in the event of a breakdown in the relationship is long overdue and the proposed report is to be welcomed. However, don't hold your breath. We have been down this route before and nothing has happened to bring in the much needed reform; the lobbyists against such reform are vocal and influential and, to date, have been successful in preventing any change."

www.cobbetts.co.uk
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Hague Lambert

Many couples now live together thinking it is the same as marrying. If things go wrong, they discover the truth. This can cause disputes and hardship. Steps should be taken to arrange your property and affairs to avoid the common legal pitfalls of living together.

At Hague Lambert contact Louise Richardson or Beverley McCluskey in Knutsford on 01565 652411 or Chris Bowen in Macclesfield on 01625 616480. All SFLA members

Mace and Jones

The law should reflect the society it serves, protect the vulnerable and be understood by the general public. Current complex and inadequate cohabitation law achieves none of this. It is hoped there is the political will to see through proposals for change to rectify the current situation.

Emma Collins
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Storrar Cowdry

There is strong opposition from some sections of society to the extension of legal rights given to cohabitees because they fear this will undermine the sanctity of marriage. It is my opinion however, that a review of the law in this area

is long overdue. I believe many people will be surprised homosexual couples who enter into a civil partnership, acquire legal rights akin to marriage but there is no such legal framework to protect heterosexual cohabitees.

Each year more and more couples choose to live together rather than entering into marriage and often bring up children in such relationships. The law should reflect this reality.

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With so many misconceptions, so many uncertainties and so many myths surrounding the "common law marriage" it is essential that anyone entering into a cohabiting relationship, or anyone finding that their cohabitee relationship has broken down should obtain legal advice from a specialist family solicitor.

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