

Married/Civil partnered - or not...what's the difference?

Many people that choose to live with their partner instead of getting married/civil partnered are under the misapprehension that they have the same rights as married couples. They think that they have a "common law marriage".

Some areas of law treat married/civil partnered couples and co-habitants the same, for example welfare benefits and child support.

There are however some very important and fundamental differences within other areas of law.

People decide to co-habit rather than get married/civil partnered for many reasons. The proportion of co-habiting couples is increasing and the number of couples that decide to marry is decreasing.

When co-habiting couples separate, these differences sometimes take them by surprise and cause many problems to be resolved.

Cohabitation has legal and financial implications that differ from marriage. Despite "common-law marriage" being abolished in 1753, there is still a widespread belief that it exists. It does not.

Couples who marry/register a civil partnership acquire certain legal rights and responsibilities arising out of their relationship. If a married/civil partnered couple choose to end their relationship, they have to do so through a formal process of divorce or dissolution. Whereas unmarried or uncivil partnered couples can separate without having to go through any formal process. But even then, splitting up can be hard to do and more difficult than a divorce/dissolution because there is no "process" for them to go through to sort things out.

When a relationship breaks down or ends following one partner's death, excohabitants are often shocked with the reality of their situation and their status in law. Some of these differences are set out below.

Children

There are differences that affect the children of un-married couples. An unmarried father does not have automatic parental responsibility for his children. If the unmarried father does not have Parental Responsibility, he has no legal rights concerning his own children.

Since December 2003, it has been easier for unmarried fathers to gain Parental Responsibility, by both parents registering their child's birth together. If the child's birth was registered before December 2003, or if the unmarried father's name is not on the child's birth certificate, then the only way he can acquire Parental Responsibility is to enter into a Parental Responsibility Agreement with the mother by signing an official document, or the Court making a Parental Responsibility Order.

With or without Parental Responsibility, the unmarried father still has a duty to pay maintenance for his children following the breakdown of a relationship.

RDC can help by drawing up a Parental Responsibility Agreement to be signed by both unmarried parents.

Finances

There are many financial implications of being in a cohabiting couple rather than married/civil partnered couples. For example, if one partner dies, the surviving partner may expect to be treated the same as s/he would be if they had been married. They are not.

There is no automatic entitlement to benefit from a partner's private pension scheme or to inherit property from their Estate upon their death. It is imperative that if you want to leave property to your partner after your death that you provide for them in your Will.

If a cohabiting couple live in a house together that is owned only by one of the couple, then the other non-owning partner, does not necessarily have a share in the property. The other partner would have to rely on complicated Property Law to establish a share.

Due to the confusion and complexity that currently surrounds co-habiting couples, there has been some talk of reforming the law to streamline arrangements for the different ways people now manage their lives. However, for now, we have to deal with the uncertain and sometimes complex law of property.

Forming a Cohabitation Agreement, although not legally binding, can be an invaluable way of setting out things that you and your partner have agreed upon, dealing with issues that are important to you both. Cohabitation Agreements can include arrangements for any children of the relationship, financial matters, how property is held and how disputes may be resolved.

By thinking about these kind of things at an early stage, it can make things much clearer and hopefully less painful in the event of the relationship breaking down.

Everyone's personal situation is different and this means that every Cohabitation Agreement will be different. RDC can help you draw up a Cohabitation Agreement and advise about the type of things that should be included in it.

For further information contact Emma Brocklebank, Read Dunn Connell solicitors on 01274 723858 or e.brocklebank@readdunnconnell.co.uk.