

A Lawfully Wedded Life?



Mwaah's recent article on resolving matrimonial and family affairs out-of-court has had quite an impact – One reader raised the question of cohabitation with us and asked what legal rights a “common law wife” might expect upon separation from her partner after living with him for many years.

Who better to turn to for advice in such matters than local solicitor Joyti Henchie, Partner and Head of the Family department at Attwaters?

Joyti Henchie,
Family Law expert

“Unfortunately the situation for cohabiting couples that eventually separate can be pretty bleak. The “common law” wife (or husband) is a modern myth. No matter how long a non-married couple have lived together, they have no legal obligation towards each other at the end of their relationship – they are simply treated in law as if they are two unrelated individuals”
Joyti explains.

“When it comes to the family home, the couple have to rely on strict trust and property law. If a non-married couple live in a property owned by only one of them, the other may find that they are simply not entitled to a share. It's possible but difficult to demonstrate that they have acquired rights and an interest in the property.

If the property is held in joint names, they are usually deemed to have an equal share (50/50) unless they have entered into an express agreement stating otherwise. If one party on separation believes that they should be entitled to more than 50% they would have to rely on trust and property law to resolve the dispute which could lead to costly and complex Court proceedings.

Unlike married couples who divorce, under

the existing law cohabitants have no right to maintenance from the other upon separation - irrespective of how long they have lived together and how they arranged and managed their joint income during their relationship. If children are involved a claim can be made by the caring parent for child maintenance or for other financial support for the child. There is financial protection for children born to cohabiting couples (by virtue of the Child Support Agency or under the Children Act 1989) but there is no security for the partners themselves”.

Regrettably cohabiting couples have no rights for a share in each other's pension, without a Will they are not automatically entitled to any share of each other's estate on death, and they are also disadvantaged when it comes to payment of inheritance tax.”

So what professional steer would Joyti give to couples who are thinking of living together? “I strongly advise to firstly enter into a Cohabitation Agreement which is legally binding. This can stipulate precisely how you would like to share assets in the event of a separation. For example, if one contributes more towards the purchase of a property together or pays the mortgage, you should enter into an express Trust Deed recording this. Also, every cohabiting couple should make a Will. My message is don't wait for the law to change, but take steps to protect yourselves”

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