

The myth of the 'Common Law Wife'

We often read or hear about a woman being a “common law wife” but, in the eyes of the law, there is no such thing! Just because a man and woman live together as “man and wife” possibly for many years, does not mean that they each have the same rights to claim financial support from the other if their relationship ends, as they would if they were married and even the rights they do have can be difficult to enforce.

For example, if the couple lived in a property which is in the name of only one of them, it can be very difficult and complicated for the other to show that they are entitled to have a share in the house on separation, even if they have paid towards the bills. The position is much simpler if the property is in both their names and the deeds to the property make clear what share each of them will have in the house if they part and it is sold.

The position is somewhat different if the couple have had children. If the couple cannot agree that the person who will have the children living with them following separation can stay in the house or have sufficient money to buy another house, then the person with care of the children can apply to the court on behalf of the children, either to be able to stay in the house or have enough money to buy a house for her (in most cases) and the children to live in until the children have completed their schooling. Once all the children have left school, the house will be sold and the monies from the sale divided as agreed between the couple or ordered by the court.

Although you can apply to the court to resolve matters if you are unable to reach an agreement, court proceedings can go on for a long time, are stressful and expensive and Legal Aid is, unfortunately, no longer available.

This is why it is a good idea to take advice from a solicitor if you are going to live together as an unmarried couple. A solicitor will be able to advise you how to ensure that the deeds to your property are clear about your respective shares in the property. You can also have a Cohabitation Agreement drawn up setting out what financial contribution you each make and how the sale proceeds are to be divided if you separate. This will hopefully avoid any additional stress at a time which is difficult enough already.

If you and your partner are buying a property together, or for a Declaration of Trust if you already jointly own property but have not specified how it should be shared in the event that the relationship ends, contact Sid Garg in our residential property department by telephone on 01628 631051 or by email to residential@colemans.co.uk.

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For advice on a Cohabitation Agreement or the fair division of assets when your relationship ends and you don't have a Cohabitation Agreement, contact Denise Bullock by telephone on 01628 631051 or by email to family@colemans.co.uk.