



The Myth of Common Law Marriage



and Alternative Protection Through Cohabitation Agreements

By Neal Macdonald

The myth vs the truth:

Many people who live together for a prolonged period often believe they have attained a Common Law Marriage affording them the same rights as a traditionally married couple.

This is a myth and is not true.

If a couple were to separate often cohabiting couples believe they would have acquired rights to each other's assets, property and finances. The truth is cohabiting with a partner (living together) does not give an individual any more rights than a couple living separately.

This can mean that on separation if the family home is in the name of one individual the other may walk away with nothing unless there is clear evidence of an intention that both partners would have a share or that both have made contributions to the property. In respect of the couples finances if not held in joint names there may be no claim to the finances of the other or there may be no right to ongoing support as would be the case if the couple were married.

Cohabitation Agreements and why they may be the answer for non-married couples:

To combat the differences in the positions of cohabiting couples and married couples it is possible to enter into a Cohabitation Agreement. This should be done before the couple are contemplating separation.

A Cohabitation Agreement is between two individuals living together and governs how the couples property and finances would be distributed in the event of the relationship breaking down. Cohabitation Agreements can stop uncertainty and make clear how the separation can occur by dealing with the following amongst other things:

- Who will take what percentage of the family home;
- Who will take important personal items (for example sentimental family heirlooms or the family car);
- Who takes which bank accounts or shares; and
- Who will be responsible for which shared liabilities moving forward.

Therefore, if a Cohabitation Agreement is in place this acts to protect each person and allows the couple to know their rights from the start of the relationship before matters may deteriorate.

In order to create a legal Cohabitation Agreement both individuals who are cohabiting should seek independent legal advice prior to signing an agreement. Even after signing a Cohabitation Agreement the couple should periodically review this and seek legal help to amend the document if there have been any changes in the couples circumstances such as a property purchase or the birth of a child.

If you think a Cohabitation Agreement is something you would like to discuss, Hethertons would be happy to help you with this.



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