

• COHABITATION: AN EQUAL PARTNERSHIP?

No-one starts a relationship thinking about what will happen if it ends. It is, however, a sad fact of life that relationships do break down, and with more and more couples nowadays choosing to live together rather than to get married, future planning may alleviate some of the upset and stress which usually accompanies a relationship break down.

Despite common misconceptions, there is no such thing in law as a "common law spouse". Living together does not give you the same rights as a married couple. Most people have heard of "pre-nuptial agreements", which are entered into prior to marriage to attempt to protect assets should the marriage fail, but few have considered Cohabitation Agreements.

Cohabitation Agreements are not just designed to help couples to separate. They can help parties to consider how they are going to live together, what their expectations of each other are and to lay down practical guidelines for how the relationship will work. Commonly, Cohabitation Agreements may set out the contributions each party has made towards the purchase of a property and may clarify the financial commitments each has made towards the payment of a mortgage, household bills and utilities.

People are often put off such Agreements, thinking that discussing what will happen if their relationship does breakdown is an admission that they feel the relationship will ultimately come to an end. On the contrary, a Cohabitation Agreement can help to strengthen a relationship by showing that the couple's relationship is mature enough to work through important decisions, as both parties will have discussed their feelings and expectations openly and will be fully aware of their partner's hopes and views of the relationship.

The recent case of, "Fowler v Barron" [2008] EWCA Civ 377, clearly demonstrates the dangers of cohabiting without any regulation of finances. In this case, Ms Fowler was awarded a fifty per cent share in the property of which Mr Barron had financed the entire deposit, mortgage and household bills throughout a period of seventeen years of cohabitation.

However, case law in this area is somewhat contradictory. In the case of, "Stack v Dowden", [2007] UKHL 17, despite joint legal ownership of a property, the House of Lords divided the proceeds of sale 65/35 in order to reflect Ms Dowden's greater financial contribution to the equity in the property.

It is worth noting that if a relationship ends on bad terms, there is no guarantee that a Court would enforce all, or particular personal parts, of a Cohabitation Agreement. Although it remains to be seen how the Guernsey Courts will deal with such issues, English law is persuasive and UK Courts are showing more willingness to uphold and give weight to these agreements provided that both parties were independently represented and were honest and open about their respective finances at the time of making the Agreement. In an area where case law is clearly contradictory a Cohabitation Agreement, entered into freely and openly by both parties, could help save on future legal fees in the unfortunate event that a relationship does come to an end.

Each relationship is different and therefore no two Cohabitation Agreements are likely to be exactly the same. Parties can, therefore, include any matters in the Agreement that they feel to be appropriate in their particular circumstances. Whether or not you are already living with a partner, drawing up a Cohabitation Agreement may help to ensure peace of mind in the future.

This Article summarises complicated issues and should not be relied upon in relation to specific matters. It cannot be seen as a substitute for detailed legal advice.

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