COLLAS CRILL

Cohabitation

DECEMBER 2020

Of all the urban myths that have circulated over the years, the belief in common law marriage is without doubt the most prevalent. The story runs that if you live together for six months or more, then you automatically acquire rights against your partner in the same way as if you were married.

For some, the idea of automatically becoming a common law spouse simply by the passage of time is sufficiently attractive for them not to get married at all, in the mistaken belief that they will be protected.

In reality, nothing could be further from the truth. Common law marriage does not exist and there are no specific laws for people who live together for however long, be it a month, a year, a decade or longer.

This is in stark contrast to people who marry, whose legal position is protected by sophisticated laws on marital breakdown, even when the marriage is short. On divorce, each party may bring claims for lump sums, transfer of the matrimonial home and maintenance for themselves. By contrast, people who simply live together and do not marry cannot bring any such claims, irrespective of their financial circumstances or the duration of the relationship.

Indeed, a cohabitee may have no rights at all. As an example, a cohabitee cannot bring any claim for financial support (spousal maintenance), even if that party has been totally dependent upon the other for the duration of the relationship. This is one of the fundamental differences between marriage and cohabitation. Whereas in a divorce, who owns the property may not matter, on the breakdown of a relationship where the parties are not married, ownership of the house is invariably a critical aspect of the case regardless of who paid the mortgage and domestic bills.

So against this background, what are the relevant laws applicable to separating couples who have not married and what remedies are available to them.

On the breakdown of a relationship where the parties are not married, only the following issues can arise:

- Ownership of real property
- Ownership of personal property
- Orders regarding children
- Domestic abuse & violence

OWNERSHIP OF REAL PROPERTY

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

This is a very complex area of the law which invariably requires detailed investigation and expert advice, preferably before the property is even purchased.

When an unmarried couple buy property together, it is very important that they each receive clear, independent advice as to how the property is bought. The reason for this is that there are different types of joint ownership, which are likely to have longstanding and serious implications as to how the property will be divided in the event of a separation and sale.

There are two main ways of jointly owning real property. Both methods of ownership can apply to married couples, unmarried couples and anyone who wishes simply to co-own property.

The first type of joint ownership is 'jointly for the survivor'. This is by far the most common method of joint ownership.

Holding a property jointly for the survivor means that upon the death of the first joint owner, their share will automatically accrue to the other owner or owners, irrespective of what may be written in a will. This is referred to as the right of survivorship.

The second type of co-ownership is referred to as 'undivided shares', which can either be on the basis of equal undivided shares or unequal undivided shares.

Whilst this type of co-ownership is generally less common between spouses or cohabitees, it can sometimes be appropriate where the parties contributed unequally towards the purchase price and where it is intended that this inequality should be reflected in the ultimate division of the proceeds. This is called unequal undivided shares. The shares are usually expressed as a fraction or in percentage terms and are stated in the conveyance.

Alternatively, the property can be purchased in equal undivided shares if the parties so wish.

Either way, owning a property in undivided shares, whatever those shares may be, means that the co-owners pass their shares by rules of inheritance ie, by their will or intestacy. In other words, their share of the property will pass to their heirs and not to the co-owner, as is the case where joint owners hold the property jointly for the survivor.

All of the above applies to cohabitees in just the same way as any other joint owners, the exception to this being married couples who are able to invoke the divorce legislation. This is yet another example of how cohabitees are left to fall back on general property law, whereas divorcing couples have their own law.

The law of joint ownership of real property is based on the principle that no person who jointly owns property is required to remain as a joint owner. In other words, any joint owner of real property can force a sale. The legal process by which a joint owner can force a sale is known as licitation.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

According to established case law, upon sale the Court will divide the net proceeds on the terms set out in the conveyance, be it jointly for the survivor, in undivided shares or whatever is stated in the conveyance. In the absence of strong evidence to the contrary, the presumption is that the proceeds shall be divided according to the specific shares stated in the conveyance, but ultimately this is a matter to be determined by the Court on the basis of the evidence available.

OWNERSHIP OF PERSONAL PROPERTY

Whilst claims against personal property are rarely pursued in Court, disputes can arise as to ownership of chattels such as furniture, cars, boats, bank accounts and other investments.

In the absence of any clear evidence to the contrary, for example, that it was a gift, the general presumption is that ownership remains with the individual who purchased the asset.

In the event that the asset was funded or owned jointly, then ultimately the Court would have to determine ownership. Usually, the cost of such litigation will exceed the value of the asset.

ORDERS REGARDING CHILDREN

These orders divide into two categories, namely:

Orders for residence, contact, parental responsibility, specific issue and prohibited steps
Financial orders

A residence order requires the children to reside with the parent named in the order. A contact order specifies with whom the children are to have access. A parental responsibility order confers joint parental rights and obligations on the parties named in the order, who are usually the parents. A specific issue order deals with a particular question that has arisen with regard to the upbringing of children. A prohibited steps order is an injunctive type of order which prevents a specific action, for example removing a child from the Bailiwick. The Magistrate's Court has power to make all of these orders irrespective of whether the parties are married or not. With the exception of parental responsibility orders, the law between those parents who marry and those who do not is largely very similar. See Orders available.

An unmarried parent can apply to the Magistrate's Court for maintenance for a child. These are referred to as affiliation proceedings, with maintenance usually paid either weekly or monthly. It is also possible to apply to the Magistrate's Court for a lump sum order up to a maximum of £1,000, although such orders are rare in practice. The level of child maintenance will be determined by the Court taking into account a number of factors, but principally the reasonable financial needs of the children balanced against the absent parent's ability to pay.

On any such application, the Court will usually direct that Statement of Means forms are exchanged, with full supporting documentation to include proof of income and all outgoings. In recent years, the Courts have usually adopted guidance from the now defunct Child Support Agency (CSA) in England. Under these rules, child maintenance is calculated at the rate of 15% of the payer's net income (after payment of tax, social insurance

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

and pension contributions) for one child, 20% of net income for two children and 25% of the payer's net income for three or more children. The local Courts may look to these figures as guidance, but ultimately it is a matter for the Court to determine the appropriate level of maintenance on the specific facts of each case. As such, the CSA guidelines should be regarded as nothing more than a very general indication of the amount likely to be awarded.

DOMESTIC ABUSE & VIOLENCE

See 'Domestic abuse & violence'.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.