COLLAS CRILL

The myth of common law marriage

DECEMBER 2022

A recent study by the *House of Commons Women and Equalities Committee* has found that the number of cohabiting couples in England and Wales is rising, with around 3.6 million cohabiting couples in 2021 compared to 1.5 million in 1996.

The study also set out that almost half (46%) of the population of England and Wales wrongly assume that cohabiting with someone forms a 'common law marriage' and grants certain legal rights and protections.

In some situations, particularly in relation to children and domestic abuse, cohabitants have similar (and sometimes identical) protections to those of spouses or civil partners. For example, the Court always has jurisdiction in relation to disputes involving children, such as contact.

However, in other areas - particularly in relation to finances and property - cohabitants have vastly inferior legal rights.

The situation in Guernsey

In Guernsey, divorcing spouses have the ability to make financial claims against one another by virtue of the marriage, for example in relation to selling and dividing the proceeds from the matrimonial home. The Court will look at the entirety of the circumstances to ensure a fair outcome is reached and will always consider the welfare of any minor children of the marriage as its first priority. The Court can make a broad range of orders to distribute the assets, including orders for spousal maintenance.

This is not the case for cohabiting couples. Upon relationship breakdown, if two people are not married then they can only have recourse to the general law of property, contract and trusts to resolve disputes. Unmarried couples have no automatic right to each other's property, regardless of how long the relationship lasted.

In relation to real property, the situation in Guernsey is also very different to that of England and Wales, so it is important people do not assume English property law automatically applies.

Many people wrongly assume that even if their name is not on the deed, they might still be able to get an interest in the property and be entitled to some of the sales proceeds, for example if they contributed to the deposit or the mortgage. This is sometimes possible in England and Wales but is generally not an option in Guernsey, where real property is owned according to whoever is named on the deed - although this can sometimes be overridden by a signed agreement setting out how any sales proceeds should be divided.

This can often result in seemingly very unfair situations.

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.

For example, a person could be in a relationship with someone for decades, have contributed to the mortgage payments or deposit on a property, and have lived in that property for many years, but they will still not be entitled to any of that property on separation if it is in the sole name of the other person. Even if the other person has verbally promised they will be given some of the proceeds of the property, this is generally not binding unless it is recorded either in the deed or a formal signed agreement.

Conversely, spouses should be aware that their situation is effectively opposite upon marriage breakdown; the Court has broad jurisdiction to divide the assets as it sees fit, regardless of whose name is on the deed to the property or who owns a particular asset.

It is therefore important for cohabiting couples to be aware of their legal position in the event of relationship breakdown and take care to mitigate any potential issues which may arise on separation. It is always easier to do this whilst still in a relationship rather than waiting until separation, when emotions are likely to be running high.

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.