

THORNLEYS SOLICITORS

COHABITATION



**Solicitors and
Commissioners
for Oaths**



**246 Dean Cross
Road, Plymstock,
Plymouth
PL9 7AZ**



**Telephone:
(01752) 406977
Fax :
(01752) 493440**



E-Mail:
Thornleys@thornleys.com



Website:
www.thornleys.com

**Thornleys Solicitors
Ltd.**

Common Law Marriage

In all but the most exceptional case - people who live together as man and wife without going through a ceremony of marriage acquire no special rights or duties in relation to each other. Unfortunately, the majority of people who cohabit believe, wrongly, that the relationship they have with their partner is legally similar to marriage in some important ways, and fail to take steps to protect themselves from financial and other problems which may arise at the end of the relationship.

End of the Relationship

During the course of the relationship an unmarried couple who are, of course, able to buy property together, have children together and make Wills in each other's favour, are unlikely to worry very much about the Law's attitude towards them. However, they may be distressed to discover that they have little or no recognition or financial protection when the relationship ends.

When a relationship between unmarried partners ends, whether because the couple want to separate or because one of them dies, the two people are generally treated by the private law as two unrelated individuals, no matter how long they have lived together. In simple terms each person takes out of the relationship the property which they have brought into the relationship. Money or assets acquired during the relationship belong to the person directly responsible for acquiring the money or assets and are only shared if there is a clear agreement to do so. Any specific agreements which the couple have entered into will operate as ordinary contracts, but the Courts will presume, unless there is very clear evidence to the contrary, that neither party intended to give the other anything as a gift. Although this sounds quite simple and in some cases may be simple, property law is a complicated area and the unravelling of the couple's financial relationship can prove complex and difficult.

Same Sex Couples

Since December 2005, same sex couples have been able to formalise their relationship by signing a civil partnership registration document; heterosexual couples cannot become civil partners and must marry if they wish to formalise their relationship. Civil partnership creates a range of mutual rights and responsibilities within a formal legal relationship which is very similar to, albeit not precisely the same, as marriage. These rights and responsibilities arise only with the creation of the civil partnership, which involves a series of legally significant acts very much like those associated with legal marriage. Except where a civil partnership has been registered, the majority of the rules governing same sex couples are the same as the rules governing unmarried heterosexual couples.

Death of a Cohabitee

It is always important to make a Will, but it is particularly important for unmarried couples to do so. Unlike a surviving husband, wife or civil partner, the cohabitee of a person who dies without having made a Will (intestate), has no automatic right to inherit anything under the rules of intestacy. This is the case even if the couple have lived together for many years and have had children together. However, if two people have lived together in the same household as husband and wife, or as civil partners, for a period of two years immediately preceding the death of one of them, the surviving partner may apply for financial provision from the estate of the deceased partner. In these circumstances there is no requirement for the cohabitee who is applying for financial provision to have been maintained by their deceased partner immediately before the death but the extent of their dependence on the deceased partner may be relevant to the exercise of the Court's discretion.

Otherwise, cohabitees can make a claim against the estate of their deceased partner only if they were being wholly or partly maintained by the deceased at the time of the death.

Joint Tenancy

Many people purchasing a house together, married or unmarried, buy it in joint names, as 'joint tenants'. For most joint tenants the straightforward answer to the question 'who owns what?' is that on separation each person takes half of the equity in the home, and if one of them dies, the survivor inherits the whole property. The decision as to where each of them is going to live after separation is likely to pose more problems. Either person can force a sale of the property to make sure that they receive their half, but with only half the value of the current home to invest in a new one, finding somewhere to live is likely to involve making some difficult decisions.

Tenancy-in-Common

It is possible to purchase a property together without sharing it equally. Couples can, instead, state that each person owns a particular share, usually on the basis of contribution to the purchase price. This arrangement is known as a "tenancy-in-common". The shares in which the property is owned should be set out in a properly drawn up legal document, a 'Declaration of Trust'. If the couple then separates, they will each be entitled to their specific share of the property. If one of them dies, the other does not automatically inherit the other person's share - they will only inherit if their former partner leaves it to them in their Will.

Sole Ownership

If the couple live in a property which is owned by only one of them, the non-owner is usually entitled to nothing - the non-owner cannot claim a share of the property simply because they have been living there for a long time. There are some ways for people who are neither married nor civil partners to acquire rights in property which legally belongs to their cohabitee, but it is very difficult to establish such rights, which arise only in unusual circumstances. It is, for example, sometimes possible to claim some sort of financial compensation for work on the property you have been living in, providing the work added to the real value of the property, and people are sometimes entitled to live in a property which they do not own because their former partner promised them that they would be able to stay there, and they gave something up, for example the right to live somewhere else, in reliance on that promise

Some special rights to property can be acquired if the couple are engaged to be married, or have agreed to enter into a civil partnership. A person who changes his or her mind about getting married or about becoming a civil partner cannot be forced to marry or to register the partnership, but if the couple separate, some different rules about property ownership may apply in relation to the 'engagement' period.

Inheritance and Pension Rights

Cohabiting partners are at an obvious disadvantage when it comes to inheriting the property of a deceased partner. There are no presumptions that a person who died without making a Will wished to leave their property to the person they were cohabiting with. Cohabiting partners who wish to leave each other their assets in the event of their death must make a Will. Even if they do so, they will be disadvantaged by comparison with a married couple or civil partners. It is important to note that a surviving spouse is exempt from Inheritance Tax unlike a surviving cohabitee who must pay Inheritance Tax on all assets which pass to them above the nil rate threshold (currently £350,000). Also cohabitees, unlike spouses, do not have the right to ask the Court to make provision for them if the Will is unfair.

Cohabitees should also review the details of their pension provision. Employers who give pensions or death-in-service payments to spouses often do not recognise partners who live together, although a few Pension Companies have shown flexibility in this respect. Cohabiting partners have no rights under the State Pension System, and occupational and Personal Pension Schemes will usually only allow a survivor's pension to be paid to a surviving unmarried partner if the survivor was financially dependent on the pension scheme member, whereas surviving married partners can qualify without financial dependence. The best protection is for cohabitees to name each other as the person to benefit from the policy.

There is nothing to stop any couple from entering into a legally binding agreement to share their assets in a particular way - and every cohabiting couple should think about whether they need such an agreement, especially if they have children.

Every couple buying a property jointly should consider very carefully and agree, before the purchase is completed, how they would wish the proceeds of sale of the property to be divided if the relationship ended. They should then take legal advice about how best to give effect to this agreement through the drawing up of the necessary documentation. Every cohabiting couple should also make Wills, particularly if there are children. People who have shared their lives without marrying or registering a civil partnership ought to seek legal advice as to how best to protect themselves in the event of death or separation.



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FOR FURTHER INFORMATION CONTACT:

Louise Vigus or Chris Winser:
Direct dial: 01752 495609 or 01752 495617
E-mail: Louise.Vigus@thornleys.com
Thornleys, Solicitors,
246/247 Dean Cross Road,
Plymstock, PLYMOUTH, PL9 7AZ
Telephone: (01752) 406977
Fax : (01752) 493440
E-Mail: Thornleys@thornleys.com
Visit our Website: www.thornleys.com



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