

## NEWS IN BRIEF

### Debunking cohabitation myths

*There are many areas of law where the public's understanding has been distorted by rumour or by media reporting designed to sensationalise. One of the most commonly misunderstood areas of family law is cohabitation. What follows is an attempt to separate the fiction from the facts.*

**Myth: A couple living together will become common law husband and wife after a certain period of time.**

In fact, cohabitees will remain cohabitees unless they marry. The court cannot apply divorce laws to cohabiting couples, regardless of how long they have lived together, or how unfair the outcome might be.

**Myth: At the end of a long relationship which has produced children, the party who is weaker financially has an entitlement to some of the family capital.**

Again, this is not the case. For cohabitees, the starting point will be that any assets that either person holds in their sole name will generally remain theirs and will be free of any claim from the other on separation. In some cases, this can mean that a partner who has cohabited for decades will leave the relationship with nothing, because the other person owned the house in their sole name.

To claim a share of a property held in one party's sole name, the other party must demonstrate a common intention that they should have a beneficial interest in the property and that they acted to their detriment on this basis.

Where property is jointly owned, it's likely that both parties will be entitled to a share in the asset. The exact shares will depend on what the couple specified in writing when they bought the asset or, failing that, their common intention as to their respective shares. Very few couples document the intricacies of their financial relationship though, and, as a result, the existence of 'common intention' can be difficult to prove.

If there are dependent children then on separation the parent with care may be able to obtain maintenance for the benefit of the children and, in more limited circumstances, help with meeting the children's capital needs, like housing.

However, that parent would not be able to obtain additional maintenance for themselves (as a married parent could), and any capital recovered to meet a child's needs will revert back to the paying parent upon the child reaching majority.

**Myth: Cohabitees inherit each other's assets on death in the absence of a Will.**

In reality, when a person dies without leaving a valid will, their property must be shared according to the rules of intestacy. Only married or civil partners and other close relatives can inherit under the rules of intestacy. Unmarried cohabitees have no right to inherit under these rules.

**Myth: Unmarried couples have the same rights in connection with their children.**

Again, this may not be so. An unmarried father may not have the same rights as a father married to the child's mother.

If the parents were married when the child was born, both have parental responsibility. An unmarried father only has parental responsibility if his child was born after 1 December 2003 and he jointly registered the child's birth. Failing that, parental responsibility may be obtained by agreement with the mother or by court order.

**Myth: The legal situation with regard to cohabiters is evolving and cohabiters will soon be better protected by the law.**

There have been proposals to change the law relating to cohabiters. In 2007 the Law Commission published a report, 'The Financial Consequences of Relationship Breakdown' (Law Com No 307), which made recommendations for law reform. After publication, however, it was shelved and the government has said that it does not intend to change the law in this area at present.

**Practical guidance**

- Be in the know about what the legal outcome would be on separation, so that parties can take steps to remedy an unsatisfactory outcome or to safeguard their position if needs be;
- Be clear about intentions with regard to property ownership from the outset and record them properly;
- Make a will;
- Talk about money matters and children, including considering a cohabitation agreement to regulate the financial relationship both during and, if necessary after the relationship; and
- Take legal advice where there is a lack of understanding and in case of changes such as moving house, inheriting, illness, and so on.

**If you would like a free initial consultation to discuss your situation and options open to you then contact me Chris Berry at:**

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