

## Common Law Marriage: An Old Wives' Tale

November 2009

Many people think that if they live with their partner for a few years, they acquire similar rights and legal protections to those of married couples. This is not true.

There is no such thing as a “common law marriage” in Manx law. Couples who live together but who are not married have very few of the rights that married couples have. This is equally true for heterosexual unmarried couples and same sex couples.

This means a couple who live together but who are not married have virtually no protection on relationship breakdown, unless they have an agreement in place. The law does not try to achieve a fair settlement between former partners, as it would with former spouses.

There is no legal provision for the payment of maintenance after a relationship breakdown. Maintenance claims can be made in respect of children, but these will end when the children leave home.

If there is no agreement in place and if one of you has built up savings and acquired possessions using his/her own money, he/she may be entitled to walk away from the relationship with all of those savings and possessions.

If your partner owns the family home, you may not be entitled to any share in it. Similarly, if you partner owns the family home or the tenancy is in his/her name, you have no automatic right to stay in the house if your partner asks you to leave.

If one partner dies without leaving a will, this can also leave the surviving partner in considerable financial difficulty. For example, take a man and woman in their mid-50s who have lived together for 27 years, the family home is registered in the man's name only, the couple have two children, the man has three children from a previous relationship and the man has the larger income. The man suddenly dies from a heart attack, having left no will.

Had the woman been his wife, she would have been entitled to inherit her share of the estate automatically. Because they were not married and the man left no will, the woman is not his next of kin. His next of kin are his five children. If the children do not agree to give the woman a share of the estate, she would be forced to instigate expensive and possibly lengthy litigation in order to obtain a share of the estate, including the family home, and she would not necessarily be successful. This situation is not fictional. These facts are taken from the English case of *Webster v Webster* which was decided earlier this year. If the woman were in the Isle of Man, she would have faced the same difficulties.

So, how can an unmarried couple ensure they are protected in the event of relationship breakdown or death?

Firstly, it is important to have a Will in place. This would have protected the woman in the *Webster* case.

Secondly, partners should consider a cohabitation agreement to deal with relationship breakdown. Partners should decide how property and assets should be owned and put this

into an agreement. Should the relationship break down, they will then have evidence of the agreement they entered into without having to rely on recollections of what may or may not have been discussed years before. In order to ensure the agreement is given full legal effect, legal advice from an advocate should be obtained, usually by each party independently.

In dealing with issues arising from the breakdown of such a relationship, the court's powers are limited mainly to upholding whatever agreement may exist. If there is no clear agreement, the court will struggle to try to work out what each partner has contributed financially and what their intentions actually were about financial matters.

The way in which partners own property will have a bearing upon the terms of any agreement. It is therefore important to consider what advantages there may be (including tax implications) in having property in joint names or even holding it through a trust or company. Any agreement therefore needs to be worded in such a way as to tie in with whatever arrangements you may have for actual ownership of the property, money and possessions as well as the terms of your will.

Negotiating a formal agreement at the outset of a relationship may be quite daunting, because particularly in the euphoria of a new romance people are unlikely to want to focus on the problems which may arise if the relationship goes wrong.

It is worth steeling yourselves to do it: otherwise the consequences not only for yourselves but for friends and relatives (who inevitably have to help clear up the mess) can be increased misery when one of you dies or things go wrong within the relationship.

The agreement will have a certain amount of legal formality, but its content will largely be dealing with practical issues. There is no limit to what you can include, but ideally the approach should be to keep the agreement as simple as possible whilst at the same time trying to build in enough flexibility to deal with possible changes in circumstances (particularly the birth or adoption of children or loss of a job).

One approach is to start off by considering the present financial circumstances and address what should happen in the event of separation in the very near future. You should then go on to consider what changes (financial and otherwise) are likely to occur over say the next five to 10 years, trying to address what should happen if separation occurs at that stage.

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