



Common Law Marriage: An Old Wives' Tale

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The most recent census¹ in the Isle of Man indicated that approximately 4000 people live together and by doing so they do not share similar rights and legal protections as married couples. Some of them may not realise this.

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

This means a couple who cohabit but who are not married or civil partners have virtually no protection on relationship breakdown, unless they have an agreement in place. The law does not allow the court to try to achieve a fair settlement between former cohabitants, as it would with former spouses or civil partners. There is no legal provision for the payment of maintenance for the support of one of the parties after such 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 cohabitee owns the family home, you may not be entitled to any share in it. Similarly, if your cohabitee owns the family home or the tenancy is in his/her name, you have no automatic right to stay in the house if he/she asks you to leave.

If one cohabitee dies without leaving a will, this can also leave the surviving cohabitee in considerable financial difficulty. For example, take a couple in their mid-50s who have lived together for 27 years, the family home is registered in one party's name only, the couple have

¹ The most recent Isle of Man Census was held in March 2011.

two children, and one also has three other children from a previous relationship and the larger income. The richer party suddenly dies from a heart attack, having left no will. Had the other party been a spouse or civil partner he or she would have automatically been entitled to inherit a share of the estate. Because they were not married or in a civil partnership the survivor is not the next of kin - the next of kin are the five children. If the children do not agree to give the survivor a share of the estate, he or she could consider expensive and possibly lengthy litigation in order to obtain a share of the estate, including the family home, but would not necessarily be successful.

So, how can a cohabiting couple ensure they are protected in the event of a relationship breakdown or death? Firstly, it is important to have a Will in place. This would have protected the survivor in the case mentioned above.

Secondly, parties should consider a cohabitation agreement to deal with relationship breakdown. They should decide how property and assets should be owned and put this into the 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 and which may in any event not be legally enforceable without a formal written agreement.

In order to ensure any 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 party has contributed financially and what their intentions actually were about financial matters.

There are different types of agreement to consider. A pre-nuptial agreement is made by a couple who intend to marry. It is signed before the marriage and usually deals primarily with arrangement of the family finances should the marriage break down or one of the parties die. A post-nuptial agreement is made by a couple who are already married. It can be entered into at any stage during a marriage, even after it has broken down (although it would then normally be referred to as a separation agreement). Similar considerations apply in relation to civil partnerships.

The way in which parties 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 then 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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