



## No Ring, No Rights!

What do the Loch Ness Monster, the Yeti and Common-law Marriage have in common? They are all myths.

### **The myth of Common-law marriage**

A survey carried out in June 2004, showed that 61% of people mistakenly believed that living together can give you the same rights as marriage. They are **wrong**. Since the Marriage Act of 1763, there has been no such thing as common-law marriage in England and Wales. Whether you live with your opposite sex partner as a “companion”, “other half” or “cohabitee”, in the eyes of the law there is no special relationship and you are not equivalent to a husband or wife. Even if you have lived together for many years the law will generally treat you as two unrelated individuals; not as a married couple.

### **Why does it matter if there is no such thing as common-law marriage?**

It matters if the relationship breaks down and the couple need to reach a financial settlement over the house they live in. If the couple are married either person has a right to ask for the following:

- Maintenance
- A lump sum
- A transfer of property into their name
- A sale of the property
- Orders in respect of pensions

In addition the law requires that all relevant circumstances of the case should be taken into account when reaching a financial settlement. By contrast if the couple is not married neither person can make any claims for any of the above and there is no guarantee that all the relevant circumstances will be taken into account.

### **The current law in relation to cohabitees**

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 them, and are only shared if there is clear agreement to do so. 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, costly and difficult. Where children are involved, in certain circumstances it may be possible for a parent to claim maintenance, a lump sum or property rights against the other, on *behalf of a child* living with them.

### **Steps every cohabitee should consider**

#### 1. Make sure any property is in joint names

This does not mean that the couple are necessarily entitled to half each. If the couple choose to hold the property as Tenants in Common they could split their shares in any way they like, for example 65/35. If the couple choose to hold the property as Joint Tenants they will hold it jointly in equal shares and if one dies the other automatically becomes the owner of the whole property.

#### 2. Make a Will

Unlike a surviving husband or wife, 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. The making of a will is particularly important if the couple hold a property as Tenants in Common as the surviving partner will only inherit the former partner's share if they leave it to them in their will.

#### 3. Enter into a Cohabitation contract or agreement

Cohabitation contracts or agreements are drawn up when a couple choose not to marry, but want to regulate clearly their property rights and what arrangements might be made for mutual financial support, dealing with debts, or looking after children. The main advantage of a contract is that they help clarify financial commitments. Provided it is prepared correctly a contract may be enforceable by the courts.

### **The future of cohabitation**

There are currently over 4 million people living with their partner in England and Wales, and many think they have rights that they don't have. Proposals for reform include providing cohabitees with a "safety net" when their relationships end in separation or death. This is likely to mean a right, after a number of years together, to claim a share of a property held in the other partner's name and maintenance payments for a limited time. As there are unlikely to be any changes in the law in the near future, cohabitees are encouraged to dispel the myth by regulating their own affairs. For further advice on this matter or on any family law matter please contact **Lesley Clay at DHC Solicitors on 01488 683555 or [Lclay@dhc-solicitors.co.uk](mailto:Lclay@dhc-solicitors.co.uk)**