Cohabitation of Unmarried Adults



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Many couples decide to enter into a cohabitation agreement or a formal agreement to memorialize their relationship rather than formally marry. Others decide not to enter into an agreement and opt for the "let's take a chance and see what happens" route. Either way, these decisions have implications and consequences. Unless you legally marry, you are unmarried in New Jersey, despite the fact that you may live together, share assets, have children, commingle your finances and hold yourself out as a married couple.

There are positives to this type of relationship, one of which, is the simplicity of dissolving this type of relationship. If there are no children, and no agreements have been entered into, the parties can simply walk away, without going through the formal divorce process. However, there are drawbacks. Couples can acquire rights and protections similar to those of married couples. One such right may be palimony where one spouse may be required to support the other after the break up. Cohabitation is an indispensable element to sustain a palimony cause of action. Cohabitation requires setting up a household together and the cohabitation announces to the innocent partner and maybe children, that the parties have entered into a 'marital-type' relationship. Also, important is the length of time the parties have been in this relationship. Without a written contract, when both parties walk away, there is no obligation to support each other. If either party does not want to risk the potential for palimony, then they must not enter into any contract that promises support. The parties should not use the same last name or portray themselves in a public like marriage.

Another risk arises when the parties acquire property together. For example, they may acquire a home together, or open joint bank accounts, or commingle assets and do so without careful record keeping. The cohabitation home can be subject to a partition action, where one party may own the home, but the other has lived in the home for years, supporting the home both

financially and with effort or “sweat equity.” When the couple breaks up, the non-owner may seek to establish rights in the property and bring an action know as partition. A claim for partition by an unmarried adult against the other requires two unmarried but cohabitating people who engage in a joint venture to buy property where they both reside. If the relationship dissolves they can seek partition of that property. A formal agreement is not necessary. To establish a joint venture, the party will need to show some evidence of contributing money, effort, property, skill or some other asset; a joint property interest; some mutual management or control an expectation of profit or the right to participate in profits.

In a cohabitation agreement, a couple can reduce to writing whether they agree to support following a break up or whether any property they require is a joint venture. These agreements may look similar to a pre-marital agreement and can often be the precursor to one if the couple believes they may ultimately marry. If the couple engages in efforts to memorialize their relationship in writing it is wise to retain counsel.

An unmarried couple may also need to consider other issues. Unmarried couples cannot make healthcare decisions for the other. If a couple sets up bank accounts together, the unmarried partner cannot make financial decisions for the other if necessary without a power of attorney. Unmarried couples do not automatically inherit from the other partner if one partner dies. Children born during a marriage are presumed to be offspring of the married couple. This gives both parents a legal obligation to support the child. If the couple is unmarried, but cohabitating, and a child is born, paternity is not assumed for the biological father. Only when paternity is established the father has the obligation to support the child.

Unmarried couples likely believe that by not marrying they avoid the pitfalls of a complicated divorce if there is a decision to break up. It is best to consider a cohabitation or relationship agreement so that the issues can be discussed and agreed up in writing so that both parties know and understand their rights before moving forward. For more information or you are contemplating moving in with your significant other, contact Carl J. Soranno, Esq to discuss your rights or to answer any questions you may have.

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