

A cautionary tale

Buying property with a partner? Take advice from **Joanna Brown**, Head of Family and Relationships at Glazer Delmar Solicitors



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John and Melanie met at university, and within a year they were living together. They got jobs in the same town, carried on cohabiting and eventually bought a house. Ten years passed and they had a son, Hugo – and three years later, a daughter, Polly. Melanie decided to work part time as John was the higher earner, so she did most of the childcare.

Then things started to go wrong. John was promoted, he worked longer hours and socialised with his workmates. Melanie felt isolated and her job was no longer satisfying. John did not help with the children as much as he had before. Melanie had an affair, and the relationship went downhill fast. In spite of counselling and sessions at Relate, John and Melanie decided to separate.

Then Melanie got a nasty shock. She thought she had rights after 15 years, but she discovered that they were limited. The house was in John's name, so she faced losing her home, and the other assets they had built up together. Many couples now cohabit rather than marry, and do not realise they do not automatically have the same rights as married couples, and in particular, that there is no such thing as a common law wife. Although it might not seem

very romantic to think about contracts when you are in the first flush of a relationship, if you don't protect yourself, you may regret it later.

If a couple decide to buy a house, they need to think about how they are going to own it. Who provides the deposit, and how will they pay the mortgage? Is it a 50-50 split, or does one person have a higher income or greater savings, or can they claim the credit for providing the discount obtained from being a council tenant for over ten years?

There are two categories of home owners, tenants in common or joint tenants. If one person has paid a large deposit or most of the mortgage, they can justify a larger share. Joint tenants own the property equally.

In the case of Melanie and John, the court will look at what the two of them intended when they bought their house. Melanie paid the deposit from her savings, and before they had children, they split the mortgage payment equally. It was only in the last five years that Melanie paid less towards the bills because she was working part time.

As a cohabitee, you should be able to get back what you put into a property financially, but savings and other assets, unless they are in your name or joint names, are off limits. You are not entitled to maintenance for yourself, either.

When married couples separate, however, everything is put into one pot and divided up. The courts also take into account the different contributions the couple have made. If the woman stayed at home to look after the children, allowing her husband to pursue his career, the court will bear that in mind when the assets are divided up.

How could Melanie and John have done things differently? Anyone going into a relationship has several options. If you don't want to marry, you can have a cohabitation agreement drawn up. It's a good idea for both parties to take independent legal advice, and then decide how they will own and pay for their property, how they would divide their savings if they separate and how any children will be looked after. Consider what may change – will you work part time and do most of the childcare?

Many couples may decide to have agreements to protect themselves and their children. Even if Melanie and John embark on new relationships and have more children, they still have an obligation to their other children, so an agreement can minimise areas of dispute and save years of heartache and argument. The Civil Partnerships Act 2004, which may become law by the year's end, allows same sex couples to register their relationship and have similar rights to heterosexual married couples. If couples separate after 30 or 40 years of marriage, pensions become an issue and cases need to be considered individually. People may feel that they have few assets, but after a lifetime's contributions a pension is a substantial asset. Sometimes it's appropriate to have an equal split, so a women in her early 60s who has not worked outside the home will have an income. Someone who is still working, albeit part time, might benefit from a share of their partner's pension.

Overall, the message to people embarking on relationships is: don't drift into cohabitation with your eyes shut. It might seem unromantic, but having an agreement drawn up to protect your assets if the worst happens is really just sensible and far-sighted. Facing a long acrimonious battle with someone you once loved over your family's financial future can be the cause of nightmares. ■

For further advice regarding Family & Relationship issues contact Joanna Brown, Head of Family & Relationships Department, Glazer Delmar Solicitors, 223-229 Rye Lane SE15 (020 7639 8801) www.glazerdelmar.com