

# **RIGHTS AND OBLIGATIONS OF UNMARRIED COHABITANTS**

## **1. Do people living together have the same rights and obligations as married people do?**

1.1. No. It is a common misconception that people living together but not married (often called living common law) have the same rights as those couples who are married but they do not.

## **2. What is the main difference between the rights of married people and those cohabiting together but not married?**

2.1. Couples who are not married have support rights but do not acquire the property rights to share equally in the assets accumulated during their cohabitation that married people do under the Family Law Act. They also do not acquire the same rights to inherit the estate of a partner who dies without a will. They are entitled to support rights as though married and may acquire pension rights depending on the pension plan and they have the right to administer the estate of a partner who dies without a Will.

## **3. At what point in time does one obtain those support rights if not married?**

3.1. Under the Family Law Act a person is deemed to be a spouse for support purposes if they have lived continuously for a period of not less than three years or they live in a relationship of some permanence, or if they are the natural or adoptive parents of a child.

## **4. Is there a time limitation to request those rights?**

4.1. Yes, if one is requesting spousal support the claim must be made within two years of the parties separating. It is therefore advisable to make such a claim right away so there is no argument as to when the parties separated.

## **5. What about rights to pensions and health plans of persons not married?**

5.1. Each pension plan and health plan govern when a common law spouse obtains rights. Some pension plans only require the couple to have lived together for a year before they are eligible for survivor pension rights. It depends on the plan.

## **6. Can an unmarried person make another type of legal claim to obtain an interest in a partner's assets?**

6.1. Yes. There are circumstances where a court might award an unmarried person an interest in the other partner's assets.

6.2. A claim can be made to receive compensation by the non owner partner on the grounds of unjust enrichment by the owner of the property to the detriment of the non owner partner. The compensation may be by way of money or a constructive trust interest in the property.

## **7. What circumstances would give rise to a successful unjust enrichment or constructive trust argument?**

7.1. There are many factors that may be taken into account some of which are not even related to the asset in question. Such factors are the length of the cohabitation, financial contributions, financial dependency, standard of living, expectation of the parties regarding the assets, positions of the parties post separation, or whether children are involved. However, there is no consistency by the courts in determining whether there is a claim or once the claim is accepted how to quantify the remedy.

**8. How does the asset holder protect him or herself from an unjust enrichment or constructive trust claim?**

8.1. It can be done very simply by having a Cohabitation Agreement stating that the person who owns the asset gets to keep it and that a trust claim cannot be made.

**9. What are the obligations to support the children of a common law spouse on separation or death?**

9.1. On separation, a person (or on death, his or her estate) who treats their partner's children like family will be obligated to pay support as though they were a natural parent of that child even if the natural parent is also paying support for that child. The amount may be lower, but not necessarily, if the natural parent is paying guideline support.

**10. What can one do to ensure child support is not payable on separation for a partner' child?**

10.1. A Cohabitation Agreement does not eliminate the obligation, so one should govern their financial and personal affairs so it will not be found that the child was treated like family personally or financially.

**11. What can one do to ensure the unmarried person has the same rights as a married person?**

11.1. Have a Cohabitation Agreement in place that provides for greater rights and ensure there are Wills naming each other as executors and major beneficiaries and have Powers of Attorney naming each other as attorneys.