

Wollen Michelmore

SOLICITORS

The Toll of the Bell

Chances are if you are reading this you are also in earshot of the bells of St. Saviours Church tolling in celebration of another marriage.

Although the majority of the adult population in the UK are in a marriage, apparently bells are chiming less often than in past times as there's an increasing trend for couples to cohabit instead of marry. Cohabiting couples are now the fastest growing family type. The increase of around 3% from 2002 doesn't sound much but it's more than likely you or someone you know is choosing to cohabit with a partner rather than marry.

It causes me some disquiet that many (perhaps most) cohabiting couples are still under an illusion that being a "common law wife/husband" offers them some protection, that somehow they miraculously acquire all the rights of a married person if they live together for long enough. They won't. Common law marriage is a myth and it does not exist in UK law.

So please spread the word that whilst marriage offers a spouse financial protection in law within the marriage, in the event of the marriage coming to an end, there is no such protection within a cohabiting relationship or in the event of a cohabiting relationship coming to an end.

Of course where a couple own property together and their cohabiting relationship breaks down, they do have the option of agreeing between themselves what they will do with their property - keep it, sell it, or how they'll divide the capital. But if they can't or won't agree with the other then they have to rely on the law of trusts for help. This is a complex area of law and court proceedings are long winded and they are expensive.

So what can be done?

I'm pleased to say that couples living together can in fact gain greater certainty than married couples, if they choose to be proactive and enter into a Cohabitation Agreement.

However, despite the fact that a Cohabitation Agreement can give cohabiting couples real clarity about their property ownership, gifts, post death arrangements, child support and many other financial issues, not many couples enter into these agreements. Cohabitation Agreements can be enforceable and even the Law Commission Consultation which has taken place in recent years focused on the fact that cohabiting couples have greater

autonomy to set out their arrangements than married couples. It's just that cohabiting couples don't know this and don't know what they need to do and don't understand the implications of doing nothing.

Of course discussions about the possibility of separation and death can be difficult and uncomfortable just as making a Will but the knowledge of clear arrangements and settled agreements can be reassuring. The wisest couples make wise investments that include making provision for themselves and each other by a Cohabitation Agreement.

The cost of negotiating and preparing an Agreement at the early stage of a cohabiting relationship can be dwarfed by the uncertainty and emotional and financial cost of not having one if the bell tolls on the relationship.

If you would like to discuss this further with a specialist solicitor please contact Elizabeth Foster at Wollen Michelmores Solicitors on: 01803 832191 (Dartmouth) or 01803 213251 (Torquay) or email: elizabeth.foster@wollenmichelmores.co.uk