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Marriage Certificate – a worthless piece of Paper?

The purpose of this article is to show exactly how many pieces of paper it is necessary to protect yourself financially if you choose not to enter into the one piece of paper many are so anxious to avoid – that is the marriage certificate; or for same sex couples (from this autumn) the civil registration certificate.

“We are living together; we don’t need a piece of paper”

How many times do we hear this from young couples moving in together in their first real relationship, or older slightly wiser couples that have emerged rather weary and battered from divorce and are very disillusioned with marriage?

How many couples enter into a relationship with a clear idea of what they want to happen to their finances, belongings and children in the event of separation or death?

By my calculation one would need at least 6 different documents to give the same financial protection on separation as provided by a marriage certificate. A competent lawyer advising should be au fait with at least five different statutes covering land, contract, probate and children law and two sets of court procedural rules. By comparison on divorce there is one statute for the children and one for finances and one set of procedural court rules.

Let me demonstrate:

1 A Co-habitation Agreement

Such a simple document; so simple that it is difficult to understand why it is often overlooked. The agreement merely sets out how co-habiting couples wish to regulate their financial and property lives. This avoids potential for financial confusion on separation and death. Situations often arise where one owns a property and the other simply moves in. Inevitably on separation, especially after a long time together each one would have a different view on how much their contribution is worth. A co-habitation agreement sets out the very basics of how money is to be managed, who pays which bills and outgoings; whether there should be joint bank accounts, and if so how should that account be used. Of course it should also record what happens if the relationship should break down, or in the event of death.

Providing the agreement has been drawn up with full knowledge of the other’s financial circumstances and with the benefit of independent legal advice a court would consider this document as a binding contract.

2 Property Licence

A licence records the basis upon which one person resides in a property that does not belong to them. It is really consent to allow a non-owner to live in the property without acquiring any legal or beneficial interest in the property. Not the sort of thing two young lovers would normally consider necessary but think about the older couple getting together and the smelly, spotty adolescent

child aged over 18 coming to live with you as part of the new relationship package and then refusing to move out when the relationship ends. Now a licence might just be the piece of paper to save your sanity!

3. Declaration of Trust Deed

Many thousands purchase a property together with the benefit of a joint mortgage. Often one provides a larger contribution towards the deposit and accompanying purchase costs, the intention may well be that the larger wage earner will meet the mortgage; and the other all outgoings. Quite often a parent will help with a deposit and want to be repaid if the relationship fails. A declaration of trust deed should be entered into to at the time of purchase to record the intention of legal ownership to the property. The deed sets out the proportions of ownership if not to be owned in equal shares.

The transfer document should also record a declaration whether the property is to be owned in equal or unequal shares. This declaration is a statement of intention and is legally binding, so advice should be sought on this document to ensure both parties understand the implications. If the property is registered as both parties being a joint tenants then without agreement to the contrary the Court can only share any sale proceeds on separation equally; despite any apparent unfairness if there is a disparity of financial contribution to the purchase.

4 Will

If co-habiting couples do not have a Will then the rules of intestacy apply; under these rules there is no provision for bereaved partners.

If one party remains married to another yet co-habits, then their original Will stands; so there may well be no provision for the cohabiter. Further any widows/widowers pension would not automatically go to the partner; that would be at the discretion of the pension trustees. Divorce nullifies any previous Will and if a new Will has not been prepared after divorce then the rules of intestacy apply.

It is sadly often the case that recently bereaved loved ones in this situation have to establish their claim to the estate to the courts, but they have to evidence a dependency. Any claim is often competing with other family members; and sometimes taking years to do. Something I am sure would never have been intended or wanted by their dearly departed.

5.Children – parental responsibility

Fathers of children born before December 2003 not married to the mother do not automatically have parental responsibility (PR) for their children. Since that date if the father is named on the birth certificate they do, but this applies only if named on the birth certificate.

Without PR in the event of a medical emergency they cannot give consent for medical treatment and they are not automatically a party to any court proceedings in relation to the children. Fathers with PR have to be consulted and involved if the local Authority instigates care proceedings; if the mother wishes to move abroad with the child; if she wishes to change their name.

Often the child's school or GP will ask an unmarried Dad if he has PR before they will provide any information about the child.

It is possible to obtain PR for a child and most mothers would agree to that, the agreement is then registered and recorded with the Principal Registry.

If the mother does not agree then it is possible to apply to the Court for an Order, in those circumstances it is first necessary to prove that it is in the child's best interests; this is not a high standard of proof but it does require court fees and legal costs.

6 Nominations for Pensions and Insurances

Not all Pension funds or insurance policies accept a co-habitant as a beneficiary under the terms of pensions or insurance policies. Some companies accept a nomination so that the benefits can be awarded to the co-habitant; this is discretionary. If the deceased remains married then there can be a competing claim to the benefit. It is not possible to split or share a pension fund on separation no matter how long you have lived together. Nominations are usually a straightforward matter of completing a form – but yet another piece of paper!

Lawyers have to competently weave a way through the intricate principles of Trust law, as applied and recorded in lengthy often complicated Court Judgements. Then to tussle with two sets of Court rules to progress the case through Court. Co-habitation falls between civil proceedings and family proceedings many lawyers deal with one or another; few deal with both.

I am sure you never thought that marriage may be a way of simplifying financial separation – rest assured it does!!