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Unmarried Couples and Property - Basics

Today, more and more couples live together before they marry and many live together indefinitely without getting married at all. Most unmarried couples accumulate a great deal of shared property, but fail to consider how the property will be divided if the relationship ends. The reality is that no matter how long the relationship lasts, where property is concerned the law still effectively treats the couple as separate individuals with no rights or responsibilities if the relationship ends. Following are some things unmarried couples should keep in mind regarding property.

Buying Property Together

Before you buy a house or other substantial asset jointly with someone else, decide how you will own the property. Doing so will protect your rights if your partner dies or the relationship ends. Basically, you need to decide whether you will own the property as joint tenants, or tenants-in-common.

Joint Tenants. Joint tenancy is a form of ownership in which ownership is shared equally. All joint tenants own equal interests in the jointly-owned property. When two or more persons expressly own property as joint tenants, and one owner dies, the remaining owner(s) automatically take over the share of the deceased person. This is termed the right of survivorship.

Tenants-in-Common. If you decide to hold the property as tenants-in-common, then each owner has a distinct share in the property. You decide the percentage of the share. For example, if one party contributes 25 percent to the purchase price, then the property share could reflect that percentage. Something to keep in mind is that unlike joint tenancy, if the co-owner dies, you do not have rights to their share of the property. Their share becomes part of their estate and will be distributed as determined by the person's will or state intestacy laws.

Property Issues If the Relationship Ends

If a house is bought in joint names (either as joint tenants or as tenants-in-common) the division may be straightforward and the house should be split 50/50 on separation. But if the property is in the sole name of one party, but both partners contribute to the mortgage and maintenance, there may be a battle if the couple separates.

If the property is in the sole name of one party, then basically it remains that person's property on separation, unless the other party can establish that there was a common intention that they would be entitled to a share in the property. Proving a common intention is difficult unless it is in writing, or there is proof both parties contributed to the purchase price, mortgage payments and maintenance.

Unmarried Couples, Property, and Death

Another essential property matter for unmarried couples to consider is what they want to happen upon each of their deaths. Unless each member of the couple develops a will and deliberately designates the other partner as a beneficiary, at death the decedent's estate will pass according to the laws of their state (called "intestate" laws). Intestate succession is the method prescribed by a state to distribute a person's property when he has not provided for its distribution in a will.

Each state has its own laws, but generally, property is distributed to the deceased person's spouse and children. If the person is not married, the property will be divided among parents, siblings, aunts and uncles, nieces and nephews, and then to more distant relatives. The decedent's partner will receive nothing. That is why it is important that couples living together develop wills or other estate planning documents that express their mutual long range plans.

A will is a legal document in which a person states his or her intentions about what they want done with debts, property, and minor children upon their death. Will provisions must be carried out unless they are illegal or impossible. A will allows a person to name beneficiaries to property, forgive debts owed, name guardians of children, create trusts, name an executor of the will, and even disinherit relatives. Developing a will or trust is an effective way to protect your partner if you should die. Consult with an experienced family law attorney to create a document that reflects your needs and wishes for your significant other.

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