



Families First

Avoid A Legal Nightmare With Cohabitation Agreement

More and more couples are choosing to cohabit. Cohabitation can be a legal nightmare for couples that have been living together for some time, pooled their assets together, and relied on each other's income, but did not protect themselves legally. Unlike divorcing couples, community property laws do not apply to couples in non-marital relationships.

LET'S USE AN EXAMPLE. DESIREE HAS BEEN LIVING with Brian for over 15 years. She considers him her life partner, but they have not married and have no intention to do so. Brian has promised to support Desiree forever, and even have a family in the future. They pooled their resources together and have several joint accounts. Desiree is no longer happy; and, despite her best effort, she cannot seem to make the relationship work. She's worried. She has not worked for the past 10 years relying on Brian's support, while she stayed home and took care of the house. She fears she will have no income or assets if she left Brian.

Once the relationship has fallen apart, Desiree has three legal options, of which only one may work. The first is Hollywood's true and faithful common law marriage. You know the movie. The character finds himself trapped in a divorce proceeding because he was duped into a *common law marriage*, or a couple who pretended they were married to each other at a one-time social gathering to fool an ex, and this prank is later used to demand one-half of the "marital" property. Under this theory, a couple is married by mere consent or cohabitation. A marriage license or solemnization is not

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required. In California, common law marriages have been abolished. Since Desiree and Brian are in California (and always have been), Desiree is out of luck.

Desiree's second option might be to claim a *putative marriage*. A putative marriage is one where at least one person in the relationship had a good faith and reasonable belief in the validity of a legal marriage. For example, one might be a putative spouse if the couple failed to properly record the marriage license, or a spouse did not know he or she was in a bigamous marriage. If a putative spouse or marriage is proved, then the putative spouse is entitled to quasi-marital property and spousal support. In Desiree's situation, neither she nor Brian consented to be married, or attempted to have a legal marriage in California, so she would not be successful with this claim.

For her third option, Desiree might try to enforce the oral contract she has with Brian, similar to any other contract between two parties. This is known as a *Marvin contract* or *Marvin claim*. If Desiree can demonstrate she had an implied or oral contract with Brian to share their wealth with one another and that Brian promised to provide for Desiree while she took care of the home, she may be able to receive a portion of the financial assets and support. At this point, this would be Desiree's best option. However, Marvin claims are tricky. Often litigated, these cases are very expensive and require a great deal of work. The results are never guaranteed, especially if they proceed to trial, as these cases are likely to be in front of a jury.

How can you avoid this result? Should you be in a non-marital relationship that is already in trouble, consider whether your partner will mediate with you, to save you money, time, and emotional expense. Otherwise, if you are in non-marital relationship, take time to protect yourself before the re-



lationship is in trouble. This applies to the Desiree's and Brian's alike. Both parties could avoid the legal nightmare by entering a Cohabitation Agreement with the help of a lawyer or mediator. A Cohabitation Agreement can be similar to a premarital agreement, by defining the financial relationship between the couple, their ownership in joint property, and what will happen should their relationship terminate. For example, should spousal support be paid? Should property be divided equally? With a Cohabitation Agreement, the couple will be better suited at addressing financial issues at the time their relationship is dissolved, rather than dealing with the nuances of the law when emotions run high. □

Editor's Note: *Dina Haddad, Esq., LL.M., is the founder of Families First Mediation, a family law mediation boutique, and provides family law mediation services in San Jose. She is a panel neutral for Agency for Dispute Resolution, headquartered in Beverly Hills, and sits as judge pro tempore for the Santa Clara County personal property arbitration program. You may reach Dina at 408.357.3486, dina@ffmediation.com, or at her website, www.ffmediation.com*

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