



What Does Cohabiting Mean? By Jodi Wyman

Most people think they understand the legal definition of when a couple is “cohabiting”. They may be surprised to learn however that the Court can find that you are a “cohabiting” or “common law” couple although you do not actually share the same home.

The issue of whether a couple is cohabiting is relevant in many different areas of law. Living together can trigger property sharing legislation, support obligations, death benefits, pension sharing requirements, changes to income tax and government benefits. Generally the question in Court case is whether a couple have been living together for the required period of time, being one year, three years etc.

If one or both partners believe that simply by maintaining an address in another location they will be free from the responsibilities of being in a common law relationship, they are mistaken.

Courts have been asked numerous times to decide whether a couple was in fact cohabiting. Over the years many different court decisions have issued all across Canada. Each case has to be decided on its own facts. There is no one factor that will decide the matter and Judges cannot simply look at whether the couple share one common residence.

When deciding if two people are a common-law couple, Judges have to look at a number of different factors. Some of the other factors are whether the two people had a conjugal relationship, whether it was an exclusive relationship, what their feelings were toward each other, if they shared meals together, if they assisted each other during illnesses, if they provided domestic services for each other such as laundry, shopping or household maintenance, if they participated in neighborhood and community activities together, if the community viewed them as a couple, and whether they shared financial

arrangements and/or financially supported each other.

Different court cases have shown different examples of why common-law couples may not have in fact been sharing the same home. In some cases the couple maintain separate residencies because they had children from previous relationships. In other cases illness may have made it more practical for the couple not to live together. One spouse may work out of town. Couples may have separated for an extended period of time while they went through counseling or other personal problems. Other times even for financial reasons it might make sense for the couple to have two different residences.

If however the spouses can show that in all other ways they were a committed couple in a conjugal relationship and viewed by the community to be a committed couple, they can be seen by the Court to be a common law couple, therefore triggering the different rights and obligations.

The only way to ensure that the various laws applying to common law couples will not apply to your own relationship is to enter into a legally binding cohabitation agreement where, with full knowledge and independent legal advice, each spouse agrees to waive their rights and obligations, and not form a true common law relationship.

It is a wise investment for any common law couple, whether sharing the residence or not, to enter into an agreement to confirm their intentions with respect to their relationship. It can save a great deal of expense and hardship later.