

CHAPTER ONE

Living Together

THE U.S. CENSUS BUREAU REPORTS that in 1998, there were 4,236,000 households consisting of an unmarried man and an unmarried woman living together. That compares with 54,317,000 households with wives and husbands living together. The 2000 census has gathered information about same-sex couples living together, but that data is not available as of June 2000.

Legality of Living Together

There is nothing illegal about an unmarried couple living together. The couple generally can live wherever they wish. Some local zoning laws prohibit more than three unrelated persons from living together in one house or apartment, but those laws would not apply to a two-person household. A government's attempt limit a couple's right to live together probably would be considered a violation of the couple's **right to free association** under The First Amendment to the United States Constitution.

A few states still have laws on the books prohibiting **fornication**--sexual relations between two persons who are not married--but such laws are almost never enforced. Some states also have laws against **sodomy**, which, among other things, prohibit sexual relations between people of the same sex. Those laws are rarely enforced if the conduct is private, consensual, and between adults

(although in 1986, the United States Supreme Court in a divided decision did uphold a Georgia law criminalizing private sexual relations between two men.)

Agreements to Share Expenses or Property

An unmarried couple living together can enter into an agreement to share expenses or acquire property. Generally, if it is legal for two persons who are not living together to enter into an agreement, it also is legal for the couple who is living together to enter into a similar agreement. The fact that two people are living together does not make the agreement automatically illegal.

So, if two people wish to agree about how much each will pay for rent, mortgage, utilities, groceries, auto expenses, etc., the agreement can be valid and enforceable. If one party does not keep his or her end of the bargain, that person can be sued. If one member of the couple is suing the other, the relationship, of course, has fallen apart.

If loss of a large amount of money is involved, a lawsuit or threat of a lawsuit may be worthwhile. If the dollar amount is relatively small, the wiser course of action probably is to walk away, hopefully with some added wisdom for dealing with the next relationship. Similarly, if there is no practical way to collect the amount due from the person who broke a promise--if, for example, the person has virtually no assets nor steady source of income--a lawsuit is not likely to be worth the effort.

In some cases, an unmarried couple may be considered to have a business relationship as well as a personal relationship. The combined

relationship can create legal rights. In an Oregon case, for example, an unmarried couple agreed to operate a ranch together and share equally in the profits and expenses of running the ranch. When the couple split up, the partner who did not own the ranch was found to be entitled to an amount of money equal to one-half the increase in value of the ranch during the time the couple lived together and worked together.

As with any contract, if a person wants protection, it is best to make the agreements specific and in writing. An oral agreement might be enforceable, but it is much harder to prove.

In order to be valid, contracts usually need to have **consideration**. That means each party to the agreement should give some benefit to the other party, such as agreeing to pay a portion of expenses. If an agreement looks as though it is only creating a gift from one party to the other with the recipient giving nothing in return, the agreement might not be enforceable because of lack of consideration.

A Promise of “I’ll Take Care of You”

Lawyers and judges often refer to certain agreements as “pillow talk”. The couple may be in bed enjoying a moment of intimacy, but one member of the couple feels insecure about the future. The other member of the couple offers reassurance along the lines of: “Don’t worry. I love you. I’ll take care of you. Everything will be okay. . . .” Sometime later, everything is not okay. One

member of the couple decides to end the relationship, and the more vulnerable member of the couple does not feel taken care of at all.

If person who feels that his or her continued care is severely lacking decides to file a lawsuit to collect on the promise, is she or he likely to succeed?

No.

To begin with, such agreements rarely are in writing, so they are hard to prove in court.

Second, a promise that “I’ll take care of you . . . Everything will be okay” probably is too vague to be enforceable. The court does not have a clear standard to determine the meaning of “I’ll take care” and “Everything will be okay.” In the absence of a clear agreement between the parties, courts are reluctant to create more definite terms of a contract. The quoted promise is not nearly as specific as an agreement to pay half the rent or to share equally the profits and expenses of running a ranch.

Third, even if the promise did not fail for lack of specificity, it could be viewed contingent on circumstances that are no longer in effect. If the promise means anything, it probably means, “I’ll support you financially as long as we are living together.” So, if the couple breaks up, a court probably would not find an enforceable promise for continued support.

Fourth, there could be a problem with consideration. As discussed in the last section, contracts usually require each party to give something in order for there to be a valid agreement. Here, the promise might be viewed as one-way or gratuitous. One partner promised to take care of the other, but there was not a

specific promise in return. So, the agreement could be unenforceable for that reason as well.

The partner who is seeking support might argue that he or she promised to maintain the home and provide emotional support in exchange for a promise of being taken care of. A promise of taking care of a home and providing emotional support is not likely to be specific enough to be enforceable, and it may be viewed as contingent on continuation of the relationship.

In addition, if a court thinks an agreement amounts to providing financial support in exchange for sexual relations, the court will not enforce it. Such an agreement will be viewed as uncomfortably close to a contract for prostitution.

Courts are more inclined to enforce agreements for tangible items such as payments of expenses or rights to property. A promise of housekeeping services or emotional support for a partner may be sincere, but it is much more amorphous than a promise to pay half the phone bill or share the proceeds of a condominium sale.

For more discussion of agreements by couples, [see chapter 2](#).

Sidebar:

LIVING TOGETHER

Bob and Carol dated for four months. They decided they wanted to live together without getting married. They plan to continue their jobs--Bob as a salesperson at a department store; Carol as a junior high school teacher. They decide to formalize their relationship and responsibilities in writing. Carol and Bob prepared a two-page statement that they both signed. They agree to share equally in living expenses--rent at a new apartment they'll obtain together, electricity, gas, groceries, and telephone (each pays for his or her own long distance calls). They each will be responsible for their own personal expenses such as clothes and car payments. If Bob and Carol break up one year later and one of them has not paid half the expenses, the promise to pay half the expenses probably would be legally enforceable, assuming there is proof of the agreement and one party's lack of payment.

* * *

Ted and Alice met at a dance where Ted was a member of the band and Alice was a guest. After dating two days, Alice moved in with Ted. They traveled often and loved staying up late at night. Alice quit her part-time job as a secretary. Ted continued to work with his successful band. In a romantic moment at 3 a.m. two months into the relationship, Ted said, "This is great! I'll take care of you, Alice. I hope we're always be together!" Four months later,

Ted finds a woman with whom he would rather be, and he asks Alice to move out. Alice sues for support and for half of Ted's earnings during the relationship. Alice is likely to lose. The agreement is not specific enough. She apparently did not specifically agree to give up something to obtain particular benefits from Ted. In addition, companionship (and sex) is not bases for an enforceable agreement between two people living together. *-[End of sidebar]*

Health Care Power of Attorney

People living together may be concerned about who will have the power to make decisions about their health care in the event that they are unable to make such decisions themselves. For example, if you're unconscious from an accident or from the final stage of a terminal illness, who is authorized to make health care decisions for you?

If you want to designate the person you're living with to make health care decisions, prepare and sign a **power of attorney for health care**. (In the absence of a power of attorney, health care decisions probably would be left to your relatives, such as a mother, father, brother, sister, or adult child.) By signing the form, you designate the individual who is authorized to make decisions about the use or discontinuation of health care. The form also may place limits on the power of the person who has the power of attorney for health care.

The holder of the power of attorney usually is entitled to have access to the patient and to the patient's medical records. The person with power of attorney for health care, however, is not obligated to pay the patient's medical bills.

If you name someone to have power of attorney for your health care, inform the person who has been named and discuss the circumstances under which life support should be continued or stopped. This will make it easier for the person with power of attorney to make an appropriate decision should the need arise. It also is a good idea to give a copy of the form to the person who has

been named (or tell that person where the form is kept). In addition, it is useful to give a copy of the form to your doctors and, if possible, bring a copy of the form with you when you are going to be admitted to the hospital.

Wills

People who are living together in a committed relationship may wish to draw up wills naming their partners as beneficiaries, at least for certain items. If, for example, the couple acquired property for their mutual use, such as furniture and appliances, each member of the couple may wish to leave their interest in the property to the other in the event of death. In the absence of a will making such a bequest, the property of one member of the couple most likely would pass to blood relatives of the deceased.

When preparing a will, you also may wish to consider leaving other types of property to your partner, such as belongings of a sentimental value or cash.

If you have doubts about the duration of the relationship, but want to leave something to your partner upon death if you are still together, the bequest might be made contingent on the partners living together at the time of death. If the parties are living together at the time of death, the will would make the bequest. If the (former) partners are not living together, the bequest would not be made, or perhaps an alternate bequest would be given.

If you and your partner hold property such as a house, condominium, or car in **joint tenancy with right of survivorship**, a will would not be necessary

to pass that property to your partner. Property held in such tenancy will pass automatically to the surviving joint tenant.

Another issue to consider when drafting a will is who is responsible for making funeral arrangements. If two people who are living together want to designate each other as responsible for preparing funeral arrangements, they should say so in their wills. Otherwise, the responsibility and right of making funeral arrangements probably would fall to a blood relative. Payment of funeral expenses generally comes from the **estate** (the money and property) of the person who died, assuming the person left enough money or property to pay for the funeral.

In addition to specifying responsibility for funeral arrangements in a regular will, you also may wish to specify responsibility for funeral arrangements in a **living will**. A living will is a document in which you leave instructions regarding when life support should be discontinued in the event you are incapacitated and cannot express your desires. For example, in a living will you might direct that you do not want artificial life support, such as a respirator or feeding tube, in the event of irreversible coma or the final stage of a terminal illness.

Since living wills are designed to be read before the time of death, they can be a useful place to express your wishes about funeral arrangements, thus increasing the likelihood that the wishes will be followed. Sometimes regular wills are not read until after the funeral.

If you do not want to sign a living will, but want to increase the likelihood that funeral instructions in a regular will are followed, tell your partner, family and close friends of the location of the will and the presence of funeral instructions in it (and perhaps your family if you prefer burial or cremation and what type of funeral or memorial service you would like to have).

Sidebar:

ENGAGEMENT RINGS

If an engagement is broken off, what happens to the engagement ring? Normally it should be returned to the person who gave it. The ring usually is viewed as a gift given in anticipation of marriage. If the marriage will not take place, the condition upon which the gift was given has been removed. So, the gift should be returned. This is particularly true if the person who received the ring broke off the engagement. In some states, if the person who gave the ring broke off the engagement, the person who received the ring is entitled to keep it.

If the parties have given each other presents during their relationships--such as birthday presents or holiday presents--those gifts normally do not have to be returned. Those presents usually would be viewed as an unconditional gifts, such as those between friends. Once the gift is given, the recipient is entitled to keep it, unless the person making the gift placed a clear condition when presenting the gift.

[End of Sidebar]

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