



A family law practice representing clients in custody and property matters that accompany the end of a committed relationship. Our goal is to protect the investments our clients have made in their marriages, their partnerships, and their children.

UNMARRIED COHABITANTS IN MASSACHUSETTS

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ONCE UPON A TIME almost thirty years ago, Chuck and Beth moved onto a farm that Beth owned. The farmhouse was primitive with no indoor plumbing, no central heat, and no insulation. The couple made improvements with a mortgage and an unsecured note for which they were jointly liable. They deposited their earnings into a joint checking account from which they paid the principal and interest on the loans as well as all the farm's expenses, including taxes and insurance. With his own funds, Chuck bought a tractor and other farm equipment, and he and Beth turned the farm into a pick-your-own raspberry patch that they operated together for several years.

When their personal relationship deteriorated, Chuck moved off the farm, though he continued to contribute his share of the mortgage payments. Seven years out, Chuck had contributed about \$55,000 and Beth had contributed about \$45,000 to the farm and its operations. When it became clear that they would not reconcile, Chuck filed a lawsuit to recover his investment. He sought recovery under two legal theories: First, he argued that the court should treat his relationship with Beth as if it were a marriage and order the same equitable distribution of property that is called for in divorce. Alternatively, Chuck argued that Beth held the farm in a constructive trust for the benefit of both of them, and if she would not convey the property to both cohabitants as joint tenants, then she should give him an amount of money equal to his interest in the farm. The court rejected both arguments.

Cohabitation is not marriage and will not create a spousal relationship. Thus, principles of equitable distribution that are routinely applied to divorcing couples cannot be invoked to unwind the financial entanglements of unmarried couples. Nor could Chuck recover under a constructive trust theory, which requires fraud, breach of fiduciary duty, or other misconduct, none of which characterized Beth's actions.

Chuck and Beth had always operated within an atmosphere of mutual trust, and no contract or other document existed setting forth the terms of their financial arrangement. Not so Carol and John. This working couple began living together in 1967, first in an apartment and then in a succession of houses that John purchased and held in his name. Carol contributed to the household expenses and to the maintenance and improvement of the houses instead of putting money into savings or a retirement plan of her own. Her contributions allowed John to use his funds to maintain the real estate and to purchase an airplane.

After a breach in their personal relationship, John conditioned Carol's return upon her signing a written agreement that neither would have any interest in the other's property: both would have separate bank accounts, neither would be liable for the debts of the other, any contribution to the mortgage would be considered rent, any money transfers from one to the other would be deemed a loan, and any services performed would be voluntary and without expectation of compensation. When they signed the agreement, John owned almost \$200,000 worth of real estate, over \$56,000 worth of personal property, and more than one IRA. Carol owned \$15,000 in real

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estate, a small bank account, and a few items of furniture and jewelry. When the relationship ended for good a few years later, Carol brought a lawsuit seeking to have the agreement declared invalid and unenforceable. She lost, and so was bound by the agreement that she had signed.

Marriage is a contract to which the state is a third party. When married couples seek to end a relationship that the state has licensed and solemnized, they must invoke the powers of the state in the form of divorce, a dissolution process that divides property and allocates debt according to established statutory and decisional law.

Unmarried couples lack access to the divorce process and the state will not create a substitute. Such couples can, however, create contracts of their own, as John and Carol did, to control the disposition of their property when their personal relationship ends. In fact, such contracts are favored by our courts and are considered good public policy.

Even long-term relationships between unmarried partners who own property together, commingle their finances, voluntarily assume responsibility for one another's debts, rear children together, and behave in every respect as married couples do may not secure the legal protections afforded to divorcing spouses. The state will not impute a marriage to a relationship that the state has not licensed and that has not been solemnized by an authorized state agent. Absent a written agreement, the state will not enforce an equitable division of property between unmarried cohabitants, and courts have consistently rejected equitable remedies that have the effect of dividing property between them. Written agreements between unmarried partners are encouraged, and they will be enforced on the same terms as any other contract.

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