**MAINTENANCE CLAIMS AND LIFE PARTNERS**

More and more couples are opting to live together as permanent life partners rather than enter into a formal marriage. The risk for such couples is that whilst our law is steadily (if slowly and cautiously) extending many of the protections of formal marriage to unmarried life partners, that process is not by any means complete yet.

A recent High Court decision, refusing a life partner’s claim for interim maintenance after her relationship broke down, illustrates.

**A “permanent romantic relationship” and a failed maintenance claim**

* An opposite-sex couple had lived together in a “romantic” relationship for 8 or 9 years, having three young children and splitting when one partner left the common home.
* That partner then sued her ex-partner for (amongst other things) personal maintenance for herself for ten years or until her “death or remarriage”. She based that claim on her request for a declaration that she and her partner had lived as “partners in a permanent opposite-sex life-partnership in which the partners had undertaken reciprocal duties of support”. That main action is being defended by the ex-partner and is yet to come to trial.
* In the meantime, having successfully obtained interim maintenance orders for her children, she then asked the High Court to likewise order interim maintenance for herself as well. She asked for R56,000 per month plus payment of medical, motor and other expenses, together with a R1m initial contribution to costs.
* The Court dismissed this interim application, and whilst its analysis of our current law on the subject, with all the constitutional law ramifications, will be of great use and interest to lawyers, the practical result is what life partners should take note of.

**What you must prove to get a maintenance order**

Holding that “a ‘permanent romantic relationship’ is not synonymous with a permanent life partnership wherein the parties undertook reciprocal duties of support to one another within the context of a familial setting”, the Court found that the applicant “must first prove facts establishing that the duty of support existed, and that it existed in a familial setting.” (Emphasis added)

She could prove all that, said the Court, in the pending court case. For the moment she must live on her own means, without interim maintenance, until her main action comes to trial.

Practically, if you find yourself in a similar situation you have four choices if you want to claim personal maintenance for yourself (note that maintenance for children is an entirely separate issue, not subject to these limitations) –

* As regards interim maintenance, you can hope that a court will assist you despite the outcome in this case, the Court here stating that “In reaching these conclusions we make it clear that they pertain only to the particular case presented to us by the applicant. Our conclusions are most certainly not intended to be of some broader implication or consequence. It thus of course remains open to anyone to approach court for declaratory relief of the nature which the applicant has sought in this matter and it is hoped that, should that occur, this judgment may provide assistance as to the manner in which such an approach should be made.”; or
* You can try to prove at the full trial that your relationship was more than a “permanent romantic relationship” and was in fact a permanent life partnership with an undertaking of mutual support; or
* You can hope for a change in the law creating an automatic duty of support between you. New legislation on the matter has been pending for many years but appears to be currently stalled. In addition, if this particular case proceeds to trial it may be that something further will emerge from that; or
* Clearly the safest solution – you can put the matter beyond all doubt by signing a full “cohabitation agreement” as soon as your relationship becomes a permanent one.

**What should be in your cohabitation agreement?**

Although everyone’s own situation and needs will be unique, make sure that your cohabitation agreement (also sometimes called a “domestic partnership agreement”) sets out clearly your respective legal rights and financial arrangements both during your relationship and in the event of separation.

Cover questions such as -

* How will your various assets be divided?
* Do you undertake a reciprocal duty of support and on separation will each or both of you be entitled to personal maintenance and other financial support?
* What provisions are made for your children’s support and maintenance?
* Will there be any financial adjustment between you? What happens for example if only one of you works? Or if you paid for an extension to your life partner’s house or have been paying the bond? Or if one of you brought more into the relationship than the other?
* Who will take over ongoing liabilities and contracts such as leases, bonds, medical and life policies, monthly accounts and so on?
* What else that will need to be regulated in your particular circumstances?
* Also make wills!

Supplement your cohabitation agreement with a valid will (“Last Will and Testament”) or perhaps a joint will. That’s the document that will count when you die and it’s the only safe way of ensuring that your last wishes are carried out, and that the loved ones you leave behind are properly looked after once you’re gone. Your cohabitation agreement and your wills are separate and essential documents, so have your lawyer draw them all for you at the same time.