

There are no translations available.



What about a couple who lives together as husband and wife, but does not have the marriage registration? What kind of property rights and obligations do they have without the marriage certificate?

Article 21 of the Code defines marriage as a family union of a woman and a man, which is registered in the state Registry office. At the first reading, the law could be interpreted that if a woman and a man live together as a family, but without registering such relations as a marriage, this alone is not sufficient grounds to trigger spousal rights and obligations. However, Article 74 of the Code clearly provides the following:

(1) if a woman or a man jointly reside as one family, but they are not married to each other and any other person, the property acquired during such joint residence belongs to them under the common property right, unless otherwise stipulated by the written agreement concluded between them;

(2) property under common ownership of a woman and a man living together as a family, but without registering an official marriage, is subject to general rules provided by law for the common ownership of the officially married persons, i.e. equal rights as for the possessing, use and alienation of such property.

As a general rule, Ukraine will have jurisdiction over any property located on its territory, as well as in the case where one of the parties proves that the cohabitation took place in Ukraine or files a lawsuit with a court in Ukraine. Thus, the partner alleging the existence of marital relations despite the absence of a marriage registration will have to prove the fact of cohabitation in Ukraine and keeping joint household in Ukraine.

Living together and keeping a common household in may be confirmed by various circumstances characteristic of family relations (living together as man and wife in the same dwelling place, having meals together, common budget, mutual care, acquisition of property for common use). Unfortunately, Ukrainian family law does not provide specific requirements to determine what period of cohabitation (living together as spouses) is sufficient to determine that marital relations exist. Moreover, cohabitation does not necessarily have to commence in Ukraine, but it must take place in Ukraine at least during some period of time sufficient for the court to establish actual marital relations. Based on judicial practice, and commentary by the Supreme Court of Ukraine, it appears that any specific term will be subject to factual review before the court on a case-by-case basis (by use of witness testimony, fact of joint acquisition of property for common use while living together, etc.).

Based on the above, if a partner without an officially registered marriage purchases an apartment (or a house), the owner is exposed to significant risks, including the following:

(a) relations between a man and a woman residing together can be recognized by the court as living like a family (i.e. to be the actual marital relations)

(b) real and movable property, purchased by one party within the period of their relationship, can be therefore considered as common ownership of both parties. In such case, the other party is entitled to exercise his/her rights (possession, use and disposal of such property) as if he/she is married to the property owner.

As a general rule, the court may consider the relations as marital and affirm both spouses' rights to common ownership only when:

(a) a man and a woman are not married to any other person, and

(b) they have established long-standing relations typical for spouses.

According to the Article 3 of the Code, a family consists of persons who reside together, are connected by joint household use, have mutual rights and obligations. The court may rule that

the relations are marital, taking into consideration evidence and supporting documents confirming joint residence, joint purchases (bills), sharing housekeeping expenses, any vacations taken together, etc.

Once the court recognizes the relations between a man and a woman as marital, it consequently causes the right of such a man and a woman to common ownership of any property earned during their union. "Common property" can include commercial/residential real estate, land, vehicles, money, shares and other securities, accounts in banks (credit institutions), and anything else acquired during the period of the couple's cohabitation, unless:

- (1) otherwise stipulated by the written agreement concluded between the parties, or
- (2) such property cannot be considered as the common ownership by law.

The Ukrainian Law further provides that any property under personal private ownership of a spouse can not be considered as the common ownership even if the relations between the parties were recognized by the court as the actual marital relations. Specifically, Article 57 of the Code defines the property as "personal private ownership" as property acquired:

- (1) before marriage (or relationships which might be considered as marriage);
- (2) during the period of marriage but under the deed of a gift or by inheritance;
- (3) during the period of marriage but for money belonging to her or him personally; (4) for individual use (e.g., property was purchased by money belonged to the owner personally or acquired before parties' relations had really started).

The owner's family members are considered to be his wife, their children and parents. Unfortunately, other persons can also be recognized as the owner's family members, including mother-in-law, if such persons permanently reside with the owner and help manage the

common household (Article 64 of the Housing Code of Ukraine). Whenever relations between two partners are recognized by the court as marital, they are considered as family members to each other. According to Article 156 of the Ukrainian Housing Code, family members of an owner of a residential house (or an apartment) that jointly reside with him have the right to use such residential space equally with the owner unless another agreement regulating the use of such house (apartment) by family members is concluded between the owner and such family members when they move into the house (apartment).

Importantly, termination of the family relations with the owner of the realty does not cancel the former family members' legal rights to use residential property. Considering provisions of the Ukrainian Housing Code with respect of the actual and former family members' right to use the apartment (on free or paid basis), the chances of evicting any "family member" without a registered official marriage (even if such relations are already over) on legal grounds is rather small, unless all the issues of the apartment's use by such a party is clearly determined by a prior agreement with the owner.

As with married couples, Ukrainian legislation spells out the parties' rights and obligations to each other and to any common children if:

- 1) the fact of joint cohabitation has been proved, including the fact of cohabitation in Ukraine;
- 2) the child is a citizen of Ukraine; 3) the child permanently resides in Ukraine.

The most important obligation that arises in the described situation is payment of child support for the maintenance of minor children. The child support is calculated in percentage from a salary/incomes or determined by the court.

In determining jointly acquired assets for the purposes of their subsequent equitable distribution between the parties, Resolution No.16 of 12 June 1998 of the Plenary Supreme Court of Ukraine "On the Application by the Courts of Ukraine of Certain Norms of the Family Code of Ukraine" requires the courts to establish the amount of jointly acquired assets available by the moment of termination of joint managing the household (cohabitation), to determine the source and time of the acquisition of the designated property. Generally, common joint property constitutes any movable and immovable property acquired during living together as a couple

(cohabitation).

The assets that used to belong to one of the persons may be found to constitute common joint property if the parties contractually agreed to this or where the court found that during the period of cohabitation the value of such property has increased as a result of labor efforts or financial expenses of the other person or of both of them.