Legal Matters®

Family Law
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Rights of long-term unmarried couples when they break up

In 2018, Brynn Cameron, the longtime girlfriend of NBA star Blake Griffin, sued Griffin for "palimony" after he left her and their children for reality TV star Kendall Jenner.

"Palimony" is money one partner pays to a cohabiting partner after a breakup so that the recipient partner can maintain the lifestyle he or she has become accustomed to.

Griffin's relationship with Jenner did not work out, but he wound up agreeing to pay Cameron $32,000 per month for palimony, child support and breach of an oral agreement he allegedly made to support her when she abandoned her career to be with him.

Most people aren't wealthy pro athletes who end up seeing their relationship woes in tabloid headlines. Still, the Griffin saga underscores that if you have a long term relationship with someone and live as though you're married, you and your former partner may still have certain rights if the relationship doesn't work out.

Take, for example, the possibility of palimony. Unlike "alimony," palimony is not a legal term and it's not usually something awarded in family court. Instead, it's a remedy that civil courts will award in about half the states if one member of an unmarried couple can show there was an agreement in place that the other member of the couple would provide support if the relationship didn't last.

Factors that courts will consider in awarding palimony include whether or not the couple lived together, how long the relationship lasted, promises that can be proven, sacrifices made by one partner, such as putting the other

partner through school or giving up a career to take care of children, or the ability of each partner to support themselves.

Some states may be fairly lenient in recognizing the rights of unmarried partners. Take, for example, a recent New Jersey case. An unmarried couple bought a home together in 2012. The home and mortgage were exclusively in one partner's name, but the other partner kicked in much of the down payment and was the one who was most involved in the transaction.

The couple never legally married. When they broke up, despite having no written cohabitation or palimony agreement, the court ordered "partition" of the home. In other words, it ordered that the home be sold and the proceeds

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Beware Social Security's remarriage rule

If you're middle-aged and thinking of getting remarried, be very careful about how you time your nuptials. That's because whether you get married before the day you turn 60 or after the day you turn 60 could impact your eligibility for survivor benefits from a prior marriage.

Under Social Security rules, if you get remarried before turning 60, you lose the right to receive survivor benefits from your previous marriage. However if you get married the day you turn 60 or any time afterwards, you are still eligible. This is true regardless of whether your earlier marriage ended in divorce or because of the death of your previous spouse.

The rules have additional quirks. For example, if you were to marry at, say, age 59, you would be giving up any claim to survivor benefits based on your

previous marriage. But if your new marriage ends in divorce or the death of your new spouse, you would once again be eligible for survivor benefits stemming from your previous marriage. You might even be able to choose between benefits from your first marriage or your second marriage.

Stock options not shareable in divorce

A recent case from Massachusetts shows that being as clear as possible with your attorney about your wishes when negotiating a separation agreement will help you greatly should a dispute arise later on.

In that case, a divorcing couple negotiated a separation agreement that merged into their divorce agreement under which the husband, a corporate executive, was to pay his wife $900 per week in alimony and $334 a week in child support.

The agreement also said that should the husband receive "any manner of bonus" from his employer, he would share 31 percent of it with his ex-wife — 15 percent as alimony and 16 percent as child support. But the agreement did not spell out what would be considered a "bonus."

Following the divorce, the husband took a new job where his compensation consisted of a salary, a bonus of up to 40 percent of his salary and stock options. Under his employment agreement, his options would vest early should the company be sold or merged.

The company was subsequently sold. The husband was terminated and exercised his stock options, worth $1 million.

The wife demanded to share in the options, characterizing them as a "bonus."

The husband, however, insisted that they did not qualify as a bonus because they were not a performance-based reward. He also pointed out that when they were negotiating the separation agreement, he repeatedly rebuffed the wife's attempt to count potential stock options earned post-separation as part of any shareable bonus, insisting he would only pay alimony and support on cash bonuses.

The Massachusetts Appeals Court agreed with the husband, noting that the term "bonus" can mean many things, but the intent of the parties is what governs, and the husband had made his intent clear. Still, the court found that the husband would still owe a portion of the proceeds as child support, since the obligation to pay child support isn't something that can be negotiated away.

If you're interested in learning about how the courts might handle such an issue in your state, talk to a family lawyer where you live.

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Court voids romantic restrictions in divorce agreement

Many divorcing parents are concerned about new romantic interests in the lives of their soon-to-be-ex-spouses and the potential introduction of these strangers to their children. Some may even want to incorporate language into their divorce agreements restricting the ability of an ex-spouse to introduce a new boyfriend or girlfriend to their children.

A recent decision out of Virginia, however, suggests that such provisions may not be enforceable.

In that case, Melanie Knoepfler-Powell and Michael Powell incorporated a provision into their property settlement agreement requiring them both to exercise "great care prior to introducing" new "boyfriends or girlfriends with whom they may have a romantic relationship" to their child.

The clause also barred them from having overnight guests of the opposite sex when the child was present in the home.

In the context of a dispute over Michael's request for a child support modification, Melanie expressed a willingness to void the provisions in question when it came to either of their relationships, Michael had recently married a woman he was living with and agreed to eliminate the restriction on overnight guests, but not the restriction on introducing the child to romantic partners.

A Virginia trial judge, however, ruled that the provisions were not enforceable.

Specifically, the judge pointed out that the U.S. Supreme Court had ruled in the past that the fundamental right to privacy guarantees the freedom to associate in various types of intimate relationships.

While the potential relationships here might not rise to that level, the judge said courts need to be careful about restraining the associations of a parent who has showed no signs of acting in a way that might harm the child.

Additionally, the judge said the provision itself was unreasonably vague, since it wasn't clear what it actually means to exercise "great care" before introducing romantic partners to the child.

This decision does not mean that any provision in a divorce agreement that restricts a partner's romantic activity will be voided. After all, this is just one case from one state involving very specific facts. But if you are considering imposing restrictions on your spouse's relationships following a divorce, it is important to discuss whether a court would actually honor such a provision.

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divided and it did so as an "equitable" remedy out of fairness to the partner who may not have held title to the home but did a lot of work to secure it, maintain it and enhance its value.

A majority of states don't recognize palimony at all. But they still will generally enforce a written cohabitation agreement drawn up between unmarried partners laying out exactly what each partner is entitled to in the event of a breakup.

In addition to financial support, such an agreement can address who keeps the house, the car or even the pets and can allow partners to appoint one another to make important medical, legal or financial decisions on the other partner's behalf should one of them lose the ability to make such decisions.

Agreements like this are a good idea in any long term domestic partnership to provide both partners with a sense of stability and security. If you are considering such an agreement, it's important to consult with a family law attorney to ensure it covers all issues worth considering and that it's written in a way that a court will enforce.

Ideally, each partner will have their own attorney when negotiating and drafting such an agreement. That way a court is more likely to be satisfied that it was negotiated fairly, with each partner enjoying comparable bargaining power and having their interests fairly represented.

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Can divorcing couples keep divorce records private?

In the Internet age, we've all gotten used to less privacy. But one thing few of us are comfortable with is the idea of our divorce being public. Unfortunately, divorce filings are generally considered a matter of public record. Additionally, divorce hearings are open to the public, which means just about anyone off the street can come in and observe.

If you're concerned about your family's privacy when going through such a difficult, sensitive time, talk to a family law attorney, because there may be options available to make the process less public.

For example, in some instances, divorce records can be filed under seal to keep them from becoming public records that are accessible to the general public. A judge has the discretion to order either portions of records or entire documents to be filed under seal.

The judge will have to balance the privacy interests of the parties in the case with the general public policy that favors court documents remaining public. Factors that a judge will consider in deciding whether to allow records to be filed under seal include the need to protect the identity of a child, the need to protect physical and sexual abuse victims and the need to protect sensitive business information.

Judges will also consider placing records under seal if there are issues of potential libel (publication of false information with the malicious intent to damage someone's reputation) should records be accessed by members of the public. But information that's simply embarrassing or something that you'd just rather not allow the public to see probably won't be enough to persuade the court to place a record under seal.

While convincing a court to place divorce records under seal may seem like a high bar to clear, courts will be willing to do so in the right circumstances, so it's worth talking to a divorce lawyer to discuss your own particular situation.