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Stable Union and Its Challenges in Property Division

União Estável e seus Dilemas na Separação de Bens

Unión Estable y sus Dilemas en la División de Bienes

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Abstract:
Considering that the division of property in stable unions still generates significant debates in Family Law, especially regarding the distinction between stable unions and qualified dating relationships, the possible need for a written agreement between partners, and the divergences present in Brazilian case law, this study aims to analyze how property division occurs and to identify the main obstacles faced by couples at the time of dissolution. To achieve this purpose, the study seeks to describe the possible property regimes applicable to stable unions, verify how property is divided when there is no formal agreement, and clarify the means of formalizing the relationship. To this end, a qualitative, exploratory, and descriptive research approach was adopted, based on bibliographic and documentary investigation. Essential legal provisions were examined, including Articles 1,723, 1,725, and 1,521 of the Brazilian Civil Code, as well as Article 226, paragraph 3, of the Federal Constitution. Contributions from widely recognized scholars, such as Carlos Roberto Gonçalves, Cristiano Chaves de Farias, and Pablo Stolze Gagliano, were also analyzed. The method employed is deductive, starting from general notions of family to understand stable unions as protected entities that produce legal effects. The hypothesis assumes that the lack of formalization and clear rules contributes to property disputes and legal uncertainty. Therefore, the study seeks to provide greater understanding and practical guidance regarding property division in stable unions.

Keywords:
Stable union. Property regimes. Formalization.

Resumo:
Considerando que a divisão de bens na união estável ainda gera debates significativos no Direito de Família, sobretudo no que diz respeito à distinção entre união estável e namoro qualificado, à eventual necessidade de contrato escrito entre os companheiros e às divergências que permeiam a jurisprudência brasileira, objetiva-se analisar como ocorre essa partilha e identificar os principais obstáculos enfrentados pelos casais no momento da dissolução. Para atingir esse propósito, busca-se relatar os regimes de bens possíveis na união estável, verificar como se dá a divisão quando não há contrato formal, esclarecer os meios de formalização do vínculo. Para tanto, procede-se a uma pesquisa qualitativa, de caráter exploratório e descritivo, desenvolvida com base em investigação bibliográfica e documental. Foram examinados dispositivos legais essenciais, como os artigos 1.723, 1.725 e 1.521 do Código Civil, além do art. 226, §3º, da Constituição Federal. Também foram analisadas contribuições doutrinárias de autores amplamente reconhecidos, como Carlos Roberto Gonçalves, Cristiano Chaves de Farias e Pablo Stolze Gagliano. O método utilizado é o dedutivo, partindo de noções gerais sobre família para compreender a união estável como entidade protegida e produtora de efeitos jurídicos. Parte-se da hipótese de que a ausência de formalização e de regras claras contribui para conflitos patrimoniais e insegurança jurídica. Assim, o estudo busca oferecer maior compreensão e orientação prática sobre a partilha de bens na união estável.

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Palavras-chave:
União estável. Regimes de bens. Formalização.

Resumen:
Considerando que la división de bienes en la unión estable aún genera importantes debates en el Derecho de Familia, especialmente en lo que respecta a la distinción entre unión estable y noviazgo cualificado, la eventual necesidad de un contrato escrito entre los convivientes y las divergencias presentes en la jurisprudencia brasileña, este estudio tiene como objetivo analizar cómo se lleva a cabo dicha partición e identificar los principales obstáculos enfrentados por las parejas en el momento de la disolución. Para ello, se busca describir los regímenes patrimoniales posibles en la unión estable, verificar cómo ocurre la división cuando no existe un contrato formal y aclarar los medios de formalización del vínculo. Con este propósito, se realiza una investigación cualitativa, de carácter exploratorio y descriptivo, desarrollada a partir de una investigación bibliográfica y documental. Se examinaron disposiciones legales esenciales, como los artículos 1.723, 1.725 y 1.521 del Código Civil brasileño, además del artículo 226, §3º, de la Constitución Federal. También se analizaron aportes doctrinales de autores ampliamente reconocidos, como Carlos Roberto Gonçalves, Cristiano Chaves de Farias y Pablo Stolze Gagliano. El método utilizado es el deductivo, partiendo de nociones generales sobre la familia para comprender la unión estable como una entidad protegida y productora de efectos jurídicos. Se parte de la hipótesis de que la ausencia de formalización y de reglas claras contribuye a conflictos patrimoniales e inseguridad jurídica. Así, el estudio busca ofrecer una mayor comprensión y orientación práctica sobre la división de bienes en la unión estable.

Palabras clave:
Unión estable. Regímenes patrimoniales. Formalización.

INTRODUCTION

Common-law marriage has become one of the most common forms of family constitution in Brazil, keeping pace with social changes and the diversification of contemporary affective arrangements. However, although widely recognized by the legal system, its regulation still raises important debates, especially regarding the division of assets upon dissolution of the relationship. This topic, besides being current, is relevant because it involves practical issues faced daily by couples and legal professionals, particularly concerning the distinction between common-law marriage and qualified dating, and the need for a written contract to define the property regime.

Existing literature demonstrates that, despite its informality, the institution has relevant legal effects, especially in the patrimonial sphere, and is the subject of debate regarding its formalization, proof, and division of assets.

Gonçalves (2020, p. 78) defines a stable union as:

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> A stable union consists of public, continuous, and lasting cohabitation aimed at forming a family; this characteristic differentiates it from sporadic relationships or those lacking affective commitment. It's important to note that the absence of formalities does not prevent the legal recognition of the relationship. The author emphasizes that this informal nature, while facilitating the formation of a family unit, can generate greater controversies upon dissolution of the union, especially regarding the division of assets.

Therefore, it is important to understand, with greater precision, how a stable union is formed and dissolved in the current legal context, and how the absence of formalization directly interferes with the couple's assets. Many people live in a stable union without recognizing the legal implications of this situation, which can result in future conflicts due to a lack of clarity regarding rights, duties, and property limits. Thus, investigating how the separation of assets occurs and the obstacles encountered by cohabiting partners contributes not only to the academic field but also to guiding society towards making more informed and secure decisions.

The object of this study is the analysis of common-law marriage from the perspective of asset division, especially when there is no formal contract. In this context, the following research problem is formulated: to what extent does the absence of formalization of common-law marriage compromise the patrimonial division of cohabitants upon its dissolution, and how does the division of assets occur? The hypothesis guiding the investigation is that the lack of formalization, whether by public deed or private contract, is one of the main factors that accentuate patrimonial conflicts, as it prevents the prior definition of clear rules and facilitates divergent interpretations.

However, the lack of formalization continues to be cited as one of the main factors of conflict between former partners. Legal scholars highlight that, without an equivalent prenuptial agreement, many disputes arise regarding the start date of the union, which assets should or should not be divided, and whether assets acquired privately can be considered the result of joint effort.

In this sense, the literature review reveals a scenario in which common-law marriage, despite being legally consolidated, still presents interpretative challenges, especially regarding formalization, the definition of the property regime, and the division of assets. The authors consulted agree that formalization, although not mandatory, significantly reduces conflicts upon dissolution of the union, bringing greater clarity to the rights and duties of each partner.

Thus, by focusing on the analysis of property regimes, the need (or lack thereof) for a written contract, and current case law, this research seeks to contribute to the practical and

theoretical understanding of common-law marriage, reinforcing its importance in the contemporary legal and social landscape.

In the first chapter, the property regimes applicable to stable unions will be analyzed, focusing on the application of the partial community property regime in the absence of a written contract between the cohabitants, as provided for in the Brazilian Civil Code. The possibilities for patrimonial stipulations by the partners and the consequences arising from the absence of formalization of the chosen regime will also be addressed. The second chapter will deal with the formalization of stable unions and their legal implications in Brazilian law, examining the instruments used for their constitution, as well as the patrimonial, inheritance, and family effects resulting from the recognition of the family entity. Finally, the third chapter will address the evidence necessary for the recognition of a stable union, analyzing the means admitted by the legal system to demonstrate public, continuous, and lasting cohabitation, established with the objective of forming a family, in addition to the relevance of evidentiary production in legal proceedings involving the subject.

METHODOLOGY

This research adopts a qualitative, exploratory, and descriptive approach, aiming to analyze the concept, evolution, and legal aspects of common-law marriage within the Brazilian legal system, in light of current doctrine and legislation. This approach is justified by the need to understand the legal phenomenon of common-law marriage not only in its normative elements but also in its doctrinal construction and social practice.

This study is based on bibliographic and documentary research, conducted through the analysis of primary and secondary sources. Primary sources considered were relevant legal provisions, especially articles 1723, 1725, and 1521 of the 2002 Civil Code, as well as article 226, §3, of the 1988 Federal Constitution, which recognizes stable unions as family entities protected by the State. Secondary sources include works by renowned scholars of Family Law, such as Carlos Roberto Gonçalves, Cristiano Chaves de Farias, and Pablo Stolze Gagliano , whose contributions are essential for the contemporary interpretation of the subject.

The research method used is deductive, starting from general premises about the legal concept of family and its constitutional protection, in order to then analyze stable unions as a legitimate form of family entity. This method makes it possible to understand the normative

and doctrinal evolution that led to the recognition of stable unions as an autonomous institution, equivalent to marriage in several legal effects.

Data collection was carried out by consulting legal books, scientific articles, legislation, case law, and normative documents available in academic databases, physical and virtual libraries, and institutional repositories. The doctrinal survey sought to identify the main interpretative currents on the subject, emphasizing the divergences and convergences among the cited authors.

The data analysis was conducted in an interpretative and comparative manner, contrasting the treatment given to stable unions by legislation, doctrine, and jurisprudence. This analysis allowed us to verify the consolidation of the institution in Family Law and the practical repercussions of formalizing or not formalizing a stable union, especially regarding patrimonial and inheritance effects.

Finally, this study is theoretical and legal in nature, without direct empirical application, but with practical relevance in offering insights into the forms of constitution, recognition, and dissolution of stable unions in the contemporary context. Thus, it seeks to contribute to the academic and legal debate regarding the consolidation of stable unions as an instrument for the realization of the constitutional principles of human dignity, equality, and family protection.

Property Regimes in Common-Law Marriages and the Application of Partial Community Property in the Absence of a Written Contract

In the context of a stable union, property regimes play a fundamental role in organizing the patrimonial relations between partners, establishing criteria for the acquisition, administration, and eventual division of assets. Brazilian legislation guarantees cohabiting partners the freedom to choose their regime, which reinforces private autonomy within the scope of Family Law.

In the absence of a written contract stipulating otherwise, the regime of partial community of property automatically applies, as provided for in the Civil Code, in its article 1,725, "if there is no written contract between the partners, the regime of partial community of property applies to property relations, where applicable" (BRAZIL, 2002).

This regime is considered supplementary and is characterized by the sharing of assets acquired for consideration during the union. Thus, all assets obtained through joint effort, even if in the name of only one of the partners, are part of the couple's common property. On the

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other hand, separate property remains excluded from the community property, such as assets acquired before the start of cohabitation, as well as those received by donation or inheritance.

The universal community property regime, in turn, is more comprehensive, as it establishes the sharing of practically all the assets of the partners, including assets acquired before and during the union. In this model, a single patrimonial estate is formed, except for exceptions provided by law, such as personal belongings or those encumbered with a clause of inalienability. This is a regime that requires a high degree of trust, given the broad patrimonial sharing it promotes.

The separation of property regime is based on the complete patrimonial autonomy of the partners. In this case, each individual maintains exclusive ownership of the assets they possess or may acquire, with no sharing of assets, except in specific situations recognized by jurisprudence, such as proof of common effort in acquiring a particular asset. This regime is frequently chosen by couples who wish to preserve their financial independence or who already have assets established before the union.

In addition to the property regimes traditionally provided for in the legal system, the possibility of stipulating specific property clauses in a stable union is admitted, in observance of the principles of private autonomy and contractual freedom. This possibility arises from the joint interpretation of articles 1,639, 1,725, 421 and 425 of the Brazilian Civil Code, allowing cohabitants to establish their own provisions regarding the administration, non-communication and division of assets, provided that legal limits and public order are respected.

It is important to highlight that the choice of property regime in a stable union must be formalized through a written contract, which can be done through a private instrument or a public deed. In this sense, Article 1,725 of the Brazilian Civil Code states that "in a stable union, unless there is a written contract between the partners, the regime of partial community of property applies to property relations, where applicable" (BRAZIL, 2002). Thus, the absence of this formalization implies the automatic application of the regime of partial community of property, a circumstance that may not correspond to the real intention of the cohabitants.

On the other hand, Gonçalves (2011, p. 606) explains that proof is "characterized by public, continuous and lasting cohabitation, established with the objective of forming a family," such as joint accounts, photographs, declarations, joint acquisition of assets, and testimonies. The Superior Court of Justice, aligned with doctrine, admits a broad range of evidence, recognizing that a stable union does not depend on registration to legally exist.

Another relevant aspect in the literature refers to the controversies that exist in the division of assets when there is no written contract.

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According to Farias and Gagliano (2022, p. 257):

> The application of the partial community property regime to stable unions stems from the principle of family solidarity, recognizing that the assets acquired during cohabitation are the result of the mutual collaboration of the partners, even if there is no equal financial contribution. The authors emphasize that family solidarity underlies this presumption.

In terms of practical effects, the marital property regime directly influences not only the division of assets in case of dissolution of the union, but also inheritance matters. The surviving partner may have different rights depending on the regime adopted and the existence of other heirs, which highlights the importance of a conscious and informed choice.

The lack of formalization, however, continues to be cited as one of the main factors of conflict between former partners. Legal scholars highlight that, without an equivalent prenuptial agreement, many disputes arise regarding the start date of the union, which assets should or should not be divided, and whether assets acquired privately can be considered the result of joint effort.

Finally, it is observed that, although common-law marriage is characterized by less formality in its constitution, the legal effects arising from the choice (or lack thereof) of the property regime are significant. Therefore, it is recommended that partners seek specialized legal advice before formalizing their cohabitation, in order to guarantee asset security and prevent future litigation.

The Formalization of Common-Law Marriage and its Legal Implications in Brazilian Law

The Civil Code, in turn, when addressing the matter in article 1,723, does not require a specific period of cohabitation for the recognition of a stable union, nor does it mandate common residence between the partners. Therefore, the characterization of the relationship depends mainly on proving the stability of the cohabitation and the intention to form a family unit.

In this understanding, Pablo Stolze Gagliano defines a stable union as an affective relationship marked by public and lasting cohabitation, established with the immediate purpose of forming a family (GAGLIANO; PAMPLONA FILHO, 2023, p. 487).

Although the law does not impose formalities for the existence of a stable union, formalizing the relationship represents an important instrument of legal security. This is

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because formalization facilitates proof of cohabitation and helps to avoid future disputes related to property, social security, and inheritance rights.

The formalization of a stable union can be done through a public deed or a private contract. A public deed is drawn up at a Notary's Office before a notary public and is the most commonly used method by cohabiting couples due to the greater legal security it offers. Through this document, the couple can declare the date the cohabitation began, choose the property regime, and establish patrimonial rules applicable to the relationship.

According to Pablo Stolze Gagliano , the formalization of a stable union has significant evidentiary value, in addition to enabling cohabitants to organize their patrimonial interests (GAGLIANO; PAMPLONA FILHO, 2023, p. 493).

In addition to a public deed, a private contract between partners is also permitted. In this case, the cohabiting partners draw up a private document containing provisions related to assets, the rights and duties of the couple, and the rules of cohabitation. For the instrument to be effective against third parties, registration at the Registry of Deeds and Documents is recommended.

Another important aspect related to the formalization of a stable union concerns the property regime. When there is no different stipulation by the cohabitants, the regime of partial community of property automatically applies, as provided for in article 1,725 of the Civil Code.

In this sense, Pablo Stolze Gagliano and Rodolfo Pamplona Filho (2023) state that private autonomy guarantees partners the possibility of freely choosing the property regime applicable to the stable union.

Formalization also produces relevant effects in the social security sphere, facilitating the recognition of dependent status before the National Institute of Social Security (INSS), especially for the granting of benefits such as survivor's pension and imprisonment allowance. Furthermore, the document can be used to include the partner in health plans, insurance policies, and other private benefits.

In matters of inheritance, the surviving partner has inheritance rights equivalent to those granted to a spouse, according to the established understanding of the Supreme Federal Court. Therefore, formalizing a stable union helps to reduce property disputes after the death of one of the partners.

The dissolution of a stable union can occur both judicially and extrajudicially. The extrajudicial procedure is carried out at a Notary's Office, provided there is consensus between

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the parties and there are no minor or incapacitated children. In the judicial sphere, the magistrate will decide on issues involving the division of assets, alimony, and child custody.

Furthermore, the Federal Constitution guarantees cohabiting partners the possibility of converting a stable union into a civil marriage, as provided for in article 226, §3, of the Federal Constitution and in article 1,726 of the Civil Code.

The evolution of common-law marriage within the Brazilian legal system demonstrates the strengthening of state protection for diverse family forms. The legal recognition of this family entity represents an important step forward in realizing the principles of human dignity, equality, and family protection.

The necessary evidence for the recognition of a stable union.

Unlike civil marriage, the establishment of a stable union does not depend on specific formalization before a notary's office; public, continuous, and lasting cohabitation with the objective of forming a family is sufficient.

In this sense, a stable union is predominantly factual in nature, characterized by the elements of cohabitation and the intention of living together. As Carlos Roberto Gonçalves teaches, "a stable union arises from the cohabitation between two people with the appearance of marriage, characterized by the stability of the relationship and the purpose of forming a family" (GONÇALVES, 2023, p. 624).

Thus, it can be observed that a stable union does not necessarily require formal registration to produce legal effects. However, the absence of formalization can generate evidentiary difficulties, especially in situations related to the division of assets, survivor's pension, inheritance, and inclusion in social security benefits.

According to Carlos Roberto Gonçalves (2023), proof of a stable union can occur through various means admitted by law, since the legislation does not establish a specific form for its proof. The author highlights that:

> A stable union can be demonstrated by any morally legitimate means of proof, including documents, witnesses, and circumstances that reveal the public and lasting cohabitation of the couple (GONÇALVES, 2023, p. 628).

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Among the main means used to prove a stable union, private and public documents stand out. A private contract of stable union is an instrument signed between the cohabitants with the objective of regulating the relationship and defining the property regime adopted by the couple. Although it has legal validity, its evidentiary value is inferior to a public deed drawn up in a notary's office.

A public deed of stable union, in turn, has greater probative force, being widely accepted before public bodies and in the judicial sphere. In addition to formally recognizing cohabitation, this document allows the choice of the property regime applicable to the relationship, providing greater legal security to the parties.

However, even in the absence of a contract or public deed, a stable union may be judicially recognized through the presentation of material and testimonial evidence. In this context, Brazilian jurisprudence has consolidated the understanding that the recognition of a stable union depends on the joint analysis of the evidence presented.

Among the main pieces of evidence accepted to prove a stable union, the following can be mentioned: i) proof of shared residence; ii) existence of children; iii) joint bank accounts; iv) acquisition of assets in both names; v) photographs and records of cohabitation; vi) publications on social networks; vii) testimonies from family and friends; viii) declarations before public bodies, such as the Federal Revenue Service and INSS (Brazilian Social Security Institute).

According to Carlos Roberto Gonçalves (2023), cohabitation is not an indispensable requirement for the establishment of a stable union, provided that the other elements characterizing a family entity are present. The author states that:

> Living under the same roof is not an essential element for characterizing a stable union, as long as the existence of a stable affective bond and the intention to form a family are demonstrated (GONÇALVES, 2023, p. 626).

Regarding property effects, article 1,725 of the Civil Code establishes that, unless a written contract provides otherwise, the regime of partial community of property applies to stable unions. Thus, assets acquired for consideration during the cohabitation belong to both partners.

As Carlos Roberto Gonçalves teaches:

> In the absence of a written contract stipulating a different regime, the regime of partial community of property prevails in a stable union, with

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> assets acquired during the period of cohabitation being shared (GONÇALVES, 2023, p. 631).

Therefore, producing evidence becomes fundamental to demonstrating not only the existence of the stable union, but also the couple's shared assets during their cohabitation. Proper proof avoids legal disputes and ensures rights related to asset division, inheritance, and social security benefits.

Therefore, it can be concluded that a stable union, although not dependent on mandatory formalization, requires evidentiary elements capable of demonstrating public, continuous, and lasting cohabitation between the partners. Formalization through a public deed or private contract represents an important mechanism for legal security, especially in matters related to the sharing of assets and the guarantee of property rights.

CONCLUSION

In light of the foregoing, it is clear that common-law marriage has become established in the Brazilian legal system as an important family entity, receiving broad constitutional and statutory protection. Although its establishment does not depend on specific formalities, the legal effects arising from cohabitation require attention to asset security and the preservation of the partners' rights.

This study demonstrated that the regime of partial community of property is automatically applied to stable unions in the absence of a written contract, as provided for in article 1,725 of the Brazilian Civil Code. It was also observed that the legislation ensures cohabitants the possibility of choosing a different property regime, through proper formalization, respecting the principles of private autonomy and contractual freedom.

It was also found that formalizing a stable union, whether through a public deed or private contract, represents an important instrument of legal security, contributing to facilitating the proof of the relationship and preventing conflicts involving the division of assets, inheritance, and social security rights. Despite this, the lack of formalization does not prevent the legal recognition of a stable union, provided that the legal requirements characterizing a family entity are present.

Regarding the proof of a stable union, it was found that the legal system allows for broad freedom of proof, permitting the use of documents, witnesses, and other elements capable of demonstrating public, continuous, and lasting cohabitation with the objective of

forming a family. In this context, the production of evidence proves essential to ensure the patrimonial and inheritance rights of the cohabitants.

It can be concluded, therefore, that a stable union, although marked by informality in its formation, produces significant legal and patrimonial effects. Thus, formalizing the cohabitation and defining the property regime beforehand is recommended in order to provide greater legal security to the parties and reduce future conflicts arising from the dissolution of the relationship or the succession of assets.

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