

# Cohabitation

## What is a Cohabitation Agreement?

More and more couples now choose to live together before they get married or enter into a civil partnership or choose never to have their relationship legally recognised at all (by marriage or civil partnership).

If you are planning to live with your partner, or if you already live together, you can enter into a Cohabitation Agreement. This may also be referred to as a Living Together Agreement. These agreements are really useful to set out arrangements for certain aspects of living together that could become potential areas for disagreement in the future. These agreements apply whether you are living together as a heterosexual or same-sex couple.

## Why should I have a cohabitation agreement?

Cohabiting does not entitle you to the same legal rights as marriage or civil partnership. There is no such thing as 'common law' marriage/civil partnership in the eyes of the law.

In reality, you have no express legal rights in a relationship if you are not married or in a civil partnership except in respect of jointly owned assets. For couples who are living together or have shared assets, this can lead to issues and uncertainties upon separation.

A cohabitation agreement can provide peace of mind in your relationship. By coming to an agreement before or whilst you are living together, you will:

- have a clear understanding of what your financial commitments are;
- avoid misunderstandings regarding your rights and responsibilities as you continue to live together, in particular with regards to ownership of property;
- avoid difficulties and disagreements if you split up; and
- have clear evidence of your intentions should you have to go to court.

The purpose of the agreement is to protect the parties in the event of a relationship breakdown. It can operate in a similar way to a prenuptial agreement. As well as dealing with such things as detailed above, it can also protect, for instance, the partner who is not so financially stable because they are working part-time to meet caring responsibilities. If you are unmarried or not in a civil partnership, you could be left with nothing, even if your partner had financially supported you for several years. The agreement can rectify this to reflect similar if you are a parent who has given up your job or are now working part-time only so you can care for the children, (and the family home is owned in your partner's sole name). In that instance, your contributions in looking after the home and raising the children would be recognised as an equal contribution as if you were married or in a civil partnership.

As cohabitees, if you own property jointly, the starting point is that it is divided 50/50 on separation as joint tenants, even when one partner contributed much more to its purchase unless you make a written agreement to declare different shares. This can take the form of a Declaration of Trust document. You should take legal advice.

To make sure that your joint intentions on setting up home together are enforceable and will provide the protection you each seek, a cohabitation agreement is vital.

## What can a cohabitation agreement cover?

Although each cohabitation agreement is different and depends on your individual circumstances, there are a few key elements you should think about before seeking advice. You need to consider the following:

- Property that you individually brought into the relationship;
- What share of the mortgage or rent you will pay;
- How household bills will be dealt with;
- Bank accounts and money;
- Ownership of property;
- Deposit on your home;
- Children and next of kin rights;
- Life insurance;
- Pensions;
- Assets such as cars, furniture, other property, jewellery;
- Payment of debts; and
- Pets.

The cohabitation agreement sets out who owns what and in what proportion in the relationship and covers elements such as pension access, property title deeds, and wills. It is vital to remember that if you are not married or in a civil partnership, you will not automatically inherit each other's estates if one of you dies. If you want to leave anything to your partner, you will need to draw up a will and keep it up to date.

## What rights do I have with a cohabitation agreement?

As you do not have the same rights as a married couple or a couple in a civil partnership when cohabiting, a legal document such as a cohabitation agreement (as well as a will) can be useful if you separate – the hope is that you have dealt with the issues from the outset and it will, therefore, hopefully, avoid expensive litigation and provide an accurate reflection as to the intentions of both parties when living together.

## Can it be updated if things change?

Yes, a cohabitation agreement can be modified once it has been created. It is advised that you keep it updated as your relationship changes or if anything significant happens in your relationship. Key reasons may include the following:

- The birth of children;
- One of you becomes seriously ill;
- One of you becomes disabled;
- One of you is made redundant;
- Your financial circumstances change significantly;
- One of you receives a large inheritance; and/or
- You plan on getting married or entering into a civil partnership.

## Does a cohabitation agreement have to be signed to be legal?

It is vital when drawing up a cohabitation agreement, to know that you will both need to seek independent legal advice about the terms of the agreement. This is to ensure that it is binding and there is no doubt as to what you are both agreeing to. By doing this, the Court is much more likely to consider the terms of the agreement as binding. The agreement has to reflect your financial positions and, therefore, it is essential that there is disclosure of your financial situations. The document should be executed as a deed.

A cohabitation agreement is a legal document, enforceable by the Court if it is properly executed and providing you have both been honest about your finances and each obtained separate legal advice upon its terms. In order for your cohabitation agreement to be valid, the following conditions must apply:

- You should both enter into the agreement freely and voluntarily;
- The agreement should be set out in the form of a deed;
- Each of you must sign the document; and
- You must keep the agreement up to date with any major life changes.

## How much does a cohabitation agreement cost?

This depends on how complex your living arrangements are going to be and how much detail you want to include in your cohabitation agreement. We will advise the cost once we know the nature and extent of your intended provisions, however, as a guide, the cost will be roughly between £650 – £1,500 plus VAT, depending on the complexity of the agreement.

## Can I legally draw up my own cohabitation agreement?

Whilst you can access templates online, the agreement should be specific to your case and tailor-made – a template may miss something out.

## **How does a cohabitation agreement affect your state pension?**

Traditionally, pensions were designed to provide for a wife if the husband died. State pension laws have now changed and the details of who the pension provider should pay out to in the event of a partner's death now differ on a case-by-case basis. As a result, it's important for couples who are cohabiting to explicitly state who they would like their pension to be paid out to in the event of their death.

## **What happens to a cohabitation agreement if one of us dies?**

If you're worried about what will happen if you or your partner dies while you are cohabiting, it's important that you outline your wishes in your cohabitation agreement and also seek advice about a Will. If you are intending to cohabit as an unmarried couple or a couple not in a civil partnership, it is essential that you each make a Will if you want your partner to inherit your estate if you die.

## **If a party sought enforcement of a cohabitation agreement, would this be done in a family court or a regular civil court?**

Should your cohabitation agreement need to be enforced, the family courts will look at it very closely when deciding how assets should be divided when couples split up.

Should you decide to separate after living together for an extended period of time, cohabitation agreements can save you a huge amount of time and money. Without a cohabitation agreement, if there is any dispute around who owns an asset or their share in it, it could result in court proceedings which are both lengthy and costly. In addition, if you are unsuccessful in the dispute, you may be required to pay for all the legal costs of the winning party.

Our highly experienced family lawyers are experts in this field and have helped many couples setting up home, or already living together, to draw up agreements that are tailored to their own individual needs. Please do contact us for further advice and information.