

Cohabitation Agreements – Client Guide

This document provides general guidance regarding cohabitation agreements. It explains what a cohabitation agreement is, why you might want to make one, and the sorts of things you might want to put into it. Your family lawyer will be able to provide specific advice based on your circumstances.

What is a cohabitation agreement?

A cohabitation agreement is a written, signed document, often signed as a deed in front of witnesses. It will generally deal with three principal areas:

- who owns (and owes) what at the time of the agreement, and in what proportions
- what financial arrangements you have decided to make while you are living together, and
- how property, assets and income should be divided if you should split up

Where the agreement is properly drawn up, the terms are reasonable, and each of you has had separate, independent legal advice on its effect, a court is more likely to uphold the agreement in the event of a dispute. It can also be prudent to include provisions that address potential future events, eg the needs of any future children.

When should I make a cohabitation agreement?

You can make a cohabitation agreement at any time, whether you are about to start living together or if you have been doing so for many years. Your family lawyer can help you negotiate this agreement and can write it down in a way that it is likely to be respected by the court in case there is ever a dispute about it.

You may also seek the assistance of a mediator to help the two of you talk about the potential terms of a cohabitation agreement, or work out what should happen using collaborative law. See also: Non-court dispute resolution—client guide.

Why should I make a cohabitation agreement?

Unlike on divorce or civil partnership dissolution, there is no particular set of rules that automatically applies if you split up from someone you have been living with. There is no such thing as ‘common law marriage’. Living with someone for a certain period of time doesn’t mean you are automatically entitled to some financial support or to share their property after you split up. There have been proposals to change the law but the government has said that it does not intend to do so at the moment. This means that where a couple has not been married or in a civil partnership, sorting out disputes about property without an agreement can be expensive and take a long time. A good cohabitation agreement can mean that areas of potential dispute on separation are reduced or eliminated.

Many couples also find the process of making a cohabitation agreement means that they have the chance to think and talk about how living together is going to work financially, meaning that arguments about money are less likely later on.

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Things you might want to cover in a cohabitation agreement

Your shared home

It is important to record how this is owned, and whether there has been any separate agreement or promise that isn't currently reflected in the legal documents. Who is paying the mortgage? If there are any endowment policies or other savings arrangements linked to a mortgage, what contributions are being made to those and how will they be dealt with if you split up? Are you going to insure each other's lives? Your family lawyer may need to advise you about the implications of arrangements regarding your shared home as this is usually the most complicated area for people living together.

Money and paying bills

Many people find it convenient to have a joint bank account when they live together but need to decide what contributions they are going to make to that account. Will the contributions be equal and if not, will you consider the money in the joint account to be equally owned? What will the joint account be used for and when should your personal accounts be used instead? If you're not using a joint account, who will pay which of the household bills and will this be considered an equivalent contribution to something else? What about credit cards and debts?

Pensions

Often overlooked, pensions sometimes give you the opportunity to make provision for loved ones. You may wish, for example, to agree nominations for death-in-service benefits.

Personal possessions

You should consider who owns and/or will keep items such as furniture and cars. It may be worth setting down now any rules about ownership of important things or a way to sort out any disagreements about them in the event of a separation, for example, each of you picking in turn from a list of items.

Children

Although not legally binding, it is worthwhile thinking about whether you might like to provide for any children over and above the minimum expected by the child support system in the event of your separation (eg in respect of school or university fees), and to set down some expectations about how children would be cared for if you were to live apart.

Anything else I should know?

It is possible that the law might change in the future to give cohabitants specific rights. Under the current proposals, if you have an agreement about what you want to happen in the event of your separation, this will take precedence over any new scheme that comes in.

You may need to review the agreement if you move house, have children or your circumstances change dramatically. It's important to ensure that the agreement is kept up to date.

You should also make a Will so that if you die while living with someone, your wishes can be put into effect. Although it is possible in some circumstances for a cohabitant to inherit, there are no strict

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rules about what should happen so it is important that you make clear what you want.

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