



Cohabitation

The number of couples cohabiting in heterosexual or same sex relationships is increasing. Their legal standing is complex and as a result when these relationships break down the ramifications can be costly and time consuming.

Legal rights and responsibilities applicable to married couples or those in a civil partnership do not apply. A cohabitation agreement signed at the outset can minimise the fallout on the breakdown of a relationship or on the death of one partner.

In what circumstances should you consider a cohabitation agreement?

- If there are assets belonging to you acquired prior to the relationship.
- Where property, particularly a home, belongs to you and is to be shared with your partner.
- If your parents have given you property or contributed to the purchase of your property.
- If it is anticipated that work will be done on your property.
- If you are planning on buying a property together.

Is cohabitation recognised by law?

You may not realise that there is no protection for either party as the law in England and Wales does not recognise unmarried partners as a legal entity, whether or not you have children. As a result, the problems arising from the lack of legal recognition will only emerge on the breakdown of the relationship or when one partner dies. Cohabitants are entirely reliant upon land law and complex trust law to determine any dispute as to the ownership of property.

How can we protect ourselves?

You could be forgiven for not considering at the outset of a relationship the possibility that it may end. However, in the absence of legislative protection, you would be wise to considering taking pre-emptive steps to deal with the issues that may arise if the relationship breaks down.

Cohabitation agreements

A cohabitation agreement can deal with issues such as the ownership of real and personal property and make provision for the division of assets upon separation. The agreement must conform to the general law of contract in order for the agreement to be enforceable. That is to say, the agreement must:

- Show that the parties intend to create legal relations.
- Be signed as a deed.
- Be clear and unambiguous.
- Include nothing about the circumstances in which the agreement was entered into which could lead to it being set aside, eg duress, undue influence or misrepresentation.

It is also important to ensure that the terms of the agreement are reasonable and properly drafted.



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Other factors to remember when preparing a cohabitation agreement are:

- Both parties should receive separate/independent legal advice.
- Both parties should give full and frank financial disclosure.
You will need to provide full details of your financial circumstances including land/property; insurance policies; investments; bank accounts; pensions; chattels, eg house contents & personal items of value.
- The agreement should be reviewed on a regular basis to ensure that it remains relevant in changed circumstances.
- If you decide to marry, the cohabitation agreement will not be relevant. You should then consider entering into a prenuptial agreement. Please see our leaflet 'prenuptial agreements' for more information.

It is advisable to confine the contents of the agreement to land, property and money. Practical day to day arrangements are probably best documented in a separate informal agreement.

Will a cohabitation agreement protect my interest in our home?

If you own property together additional protection can be afforded using a deed of trust which defines how property is held, that is, the extent of each party's interest in the property. This is particularly helpful where contributions to the property have been unequal.

Will we be protected if one of us dies?

Cohabitants are also at a disadvantage if one partner dies. You are not able to benefit under the rules that govern intestacy, so if it is intended that you should benefit on the death of your partner it is important that provision is made during your lifetimes.

Making a will is the simplest way to protect one another, and holding property in joint names, so that on death the survivor will automatically inherit the property. Whilst legislation exists to enable the surviving cohabitant to make an application to court for financial provision from the deceased partners' estate such applications are only available to those who have been cohabiting for at least two years. Further the court will only deal with cases where the deceased failed to make reasonable financial provision.

What documents should be prepared?

- Cohabitation agreement.
- Separate agreement for day to day issues.
- Declaration of trust.
- Will.

The key to avoiding any uncertainty is openness and discussion at the early stage of your relationship. Be honest with your partner and explain any concerns you may have regarding your future financial security. By making provision for all eventualities you can make a relationship stronger, not weaker in the long term.

If you would like more advice please contact one of our specialist family lawyers. Lester Aldridge LLP has offices in Bournemouth, Southampton and London.