



Family Department Cohabitation Agreements

Why is a Cohabitation Agreement advisable?

If you are living together in a relationship with someone for any length of time, but you are not married or in a Civil Partnership with that person, difficulties can arise if that relationship breaks down. Although many couples now live together in this way there are no clear legal rules which apply in this situation. People are often surprised to learn that they may have no automatic legal rights to the property that they have shared and regarded as their home or to any form of financial maintenance, no matter how long the relationship has lasted.

This can lead to complex disputes if, for instance, your home is not jointly owned (ie formally held in joint names at the Land Registry) or there are other significant assets which are not jointly owned such as vehicles, savings and investments or a business. It may also place one party at a substantial disadvantage if he or she has given up work to care for any children of the relationship or another family member, and no longer has any independent income, career or pension provision. A Cohabitation Agreement can be used to cover many of these issues, providing greater certainty and protection for both parties.

When should I consider a Cohabitation Agreement?

If you are just starting out in a relationship and sharing a rented flat, and neither of you have any substantial assets a Cohabitation Agreement is probably not necessary. But it might be sensible to consider one if you are thinking about children or buying a house, or realise that you are acquiring other substantial assets as a couple, but do not intend to enter into a more formal relationship. You can make appropriate provision for each other and any children in the event that the relationship breaks down. This will reduce the likelihood of a dispute at what would already be a difficult time for all parties, and the need for expensive litigation. The process itself may also be helpful as it will clarify potential areas of difficulty and enable you to take appropriate action, perhaps by ensuring that future assets are acquired in joint names or making Wills etc.

Cohabitation Agreements can also be used where two or more friends agree to buy a property together but these situations are more usually dealt with in a deed of trust entered into at the time of the joint purchase.

What can be covered in a Cohabitation Agreement?

Entering into a Cohabitation Agreement enables both parties to consider their financial affairs and their current and prospective assets and be clear as to their expectations in the event that the relationship comes to an end. Your respective personal and financial circumstances are likely to dictate the content of the Agreement but typically the agreement is likely to cover matters such as:

- Your shared home – how this major asset will be dealt with, particularly if it is not currently owned jointly and/or there are children who would need a suitable home.
- Personal property – in the course of a longstanding relationship you may acquire major assets such as vehicles, expensive furniture and household items, paintings or collections and similar items. You will rarely have identified their “owner” and it may in some instances be sensible to formalise this in the Agreement or indicate how they should be divided.
- Financial provision - this is likely to be an issue if one of you has given up work to care for children or given up a career for some other reason. Equally if there is a wide disparity in your respective incomes it may be advisable to deal with the question of whether any continuing form of financial provision would be appropriate. Any investments and savings, pensions and other financial assets may also require consideration.
- Children – provision for their financial maintenance and housing will be required together with agreement regarding parental responsibility. You may also want to cover other issues such as schooling, religion etc.

Other common matters for inclusion are business assets (if one or both of you is self-employed or owns a business), additional property assets including foreign property, timeshares etc, pets and potential assets (eg family inheritance).

The Process

When you instruct us to draw up a Cohabitation Agreement we will take the following steps on your behalf:

- We will normally advise that each party is separately represented, to ensure that each of you has independent legal advice;
- We will meet with you to take your instructions and review both parties' current and future assets and finances;
- We will advise you on the manner in which those assets might be divided in the absence of a Cohabitation Agreement and what provisions the Agreement could include to safeguard the interests of both parties;
- We will prepare or negotiate a draft agreement in accordance with your instructions (and deal with any changes you require);
- We will arrange for you to sign the final version of the Agreement, once it has been settled.

This Guide is not intended to be comprehensive. It highlights and explains the common legal issues relevant to this topic. It should also help you to understand any steps we take on your behalf and the terms we and other professionals involved in your matter may use. Please read this Guide carefully and contact the lawyer dealing with your matter if you do not understand anything in it. We will not repeat the advice or information provided in this Guide when we meet you or write to you unless we need your specific instructions on some aspect of it.