

Cohabitation & Living Together

Agreements



Despite the rapid increase in the number of couples living together rather than marrying, very few think about the legal issues. It is still common for people to assume they are protected by 'common law' rights in the same way that married couples are. This is not the case. In fact, couples who live together have hardly any of the same rights as married couples. There is no such thing as 'common law marriage'.

If a married couple divorce there is legislation which provides how the court should deal with their financial arrangements such as property division and maintenance. The courts have wide powers and discretion irrespective of which of the spouses actually owns it. When a cohabiting couple separate there is no legal provision for maintenance or redistribution of property. Where a property is only in one of the party's names the starting point for the court would be that the other party is not entitled to share in it at all. Unlike in a divorce there is no consideration of fairness or reasonableness in the division of property. The court only currently has power to declare who owns what.

Although Cohabitation Agreements (also known as Living Together Agreements) are becoming increasingly popular they are still the exception rather than the rule and there remains legal debate as to their enforceability. Disputes between former cohabitants which reach the courts are often protracted and expensive. There is invariably little evidence to support what either party says as most of it will be about conversations the parties have had in the past.

What is a Cohabitation Agreement?

A cohabitation agreement (also known as a Living Together Agreement) has two main purposes:

- It will decide how the parties will live together on a day to day basis covering issues such as payment of the bills and the ownership of the home etc.
- If the parties separate it will help to ensure that it is as amicable as possible by setting out who will be responsible for the payment of what and who will be entitled to what.
- It will detail the property that each party has in their own name when the agreement is made.

It is simply a record of what you have agreed about how you will own and share things. It prompts you to think about easy and fair ways to organise your day to day finances and ensures that if your relationship ended, neither of you would lose out financially - unless that is what you had agreed.

A cohabitation agreement is designed to provide the evidence of 'intention' and hopefully thereby avoid future litigation.

Are they enforceable?

A cohabitation agreement is in effect a contract between a couple and so long as it complies with the basic requirements of contract law, it should be legally enforceable.

To minimise challenges against the enforceability of the agreement, allegations of duress and undue influence need to be avoided.

Parties to a cohabitation agreement should have independent legal advice and make full and frank financial disclosure. It is also common to include a certificate to be signed by each lawyer confirming that they have advised their client regarding the effect of the agreement.



In looking at whether a contract of this nature is enforceable the courts take into account a number of factors including the following:-

- Whether the parties understood the nature of the agreement when it was signed
- Whether one party was placed under duress to sign it
- Whether the parties intended that the agreement should be legally enforceable
- Whether there was full and frank financial disclosure
- Whether each party has received independent legal advice

When should they be made?

Ideally you would make a cohabitation agreement when you first move in together. There is nothing preventing a couple entering an agreement at any time during the time they live together. Better late than never, so even if you have already been together for 10 years it is still a good idea.

What can be included in the Agreement?

Financial issues are a key part of a cohabitation agreement. The agreement should include what rights each partner has in relation to the property you live in, who owns other assets and who is responsible for any debts. It is also common for the agreement to look at how you will share expenses while you live together. Where you have children, either jointly or with a previous partner, the agreement can also address this.

What can't be included in the Agreement?

It is not generally a good idea to include rules on behaviour in the agreement. It will be difficult to legally bind someone to do the washing up or take the bins out for example. Attempting to include such rules is likely to undermine the clarity and enforceability of the agreement.

What happens if we later get married?

If you get married (or register a civil partnership), your cohabitation agreement might be taken into account by the court if you later divorce or dissolve your civil partnership. A better solution is for the cohabitation agreement to specifically state that it automatically comes to an end if you get married. If, at that time, you want to have a similar agreement, you can draw up an appropriate pre-nuptial agreement.

How can we help?

A Cohabitation Agreement is a bespoke document and should always be drafted by a lawyer to ensure it meets the legal criteria. We will discuss with you what you want to achieve and will also provide you with a useful checklist of matters that you need to consider within the agreement as well as addressing other issues such as Wills. If you would like to discuss these types of agreements or any other legal issue please do not hesitate to contact us.