

Your guide to cohabitation and living together agreements

Overview

Couples who live together ('cohabit') but don't marry have very few rights, obligations or protections should their relationship end. This can cause real uncertainty, difficulties and expense if you split up. A cohabitation agreement (also known as cohabitation contract, cohabitation deed or living together agreement) can remove uncertainty by recording the financial and practical arrangements you want to make both during your relationship and in the event of a separation.

A cohabitation agreement can specify the shares in which you own a property and how to deal with any financial contributions either of you make in the future. It can also set out how you will financially support any children, as well as provide for the payment of household expenses, education costs and ownership of personal property (including items such as cars, furniture, house contents or other important personal possessions).

These agreements are not just for those in a cohabiting relationship. Anyone pooling their resources to provide a home, or an investment should consider having one.

What types of property are there?

There are two types of property; real property (this is immovable property such as land and buildings) and personal property (movable and any property other than land).

What is the difference between legal title and beneficial interests?

There are two aspects to the ownership of property; the legal title to property and the beneficial interests in it (the right to receive the profits or income from a property or the right to live in it). Both may be vested in the same people, but this is not always the case. Put simply, parties' beneficial interests in a property will determine their share of the profit/equity.

Joint tenants or tenants in common?

Beneficial ownership can be held as joint tenants or tenants in common. Joint tenants have equal rights to the whole property. If one joint tenant dies the whole of the property automatically passes by the rules of survivorship to the co-owning joint tenant. As tenants in common, each party holds their own separate and distinct share and on death their share will not automatically pass to the surviving co-owner and instead passes in accordance with their Will, or if no Will under the Rules of Intestacy.

What are the advantages of having an agreement?

- **Protection against claims**

A cohabitation agreement will clearly declare the legal and beneficial interests in a property and avoid potential claims and costly litigation. The agreement can also record whether there is to be a sale or transfer of the property in the event of a separation and allow you to map out how this will happen. This again will avoid any dispute and need for costly litigation.

In the absence of fraud, mistake or undue influence an express declaration of trust in a cohabitation agreement will be conclusive of the beneficial interests in a property. If there is no express declaration the court can be asked to declare what the parties' beneficial interests are. If it is not possible to ascertain the extent of the beneficial interests by direct evidence the court may either 'infer' the parties' shared intentions in relation to the property in the light of their whole course of conduct in relation to it or 'impute' an intention. The court will assess the fair share having regard to the whole course of dealing between the parties in relation to the property.

A cohabitation agreement will also reduce the risks of a claim for proprietary estoppel. This arises from the courts' equitable jurisdiction to 'adjust' rights over property if the assertion of strict legal rights is found to be unconscionable. It arises most commonly where a property owner encourages the other party to act to their detriment in the belief that they will obtain an interest in the property.

- **Financial security**

A cohabitation agreement will enable you to make financial provision for one another or your children in a way that would not be required by law. Couples who live together but don't marry have very few rights or protections. There is no such legal status of 'common law husband and wife'. Unlike married couples, there is no legal obligation on couples living together to financially support one another should their relationship end. A cohabitation agreement can record the financial and practical arrangements you want to put in place both during the relationship or in the event of separation.

- **Protecting family interests and inheritance**

A cohabitation agreement can ensure that the interests of you and your wider family are safeguarded, particularly if family businesses, trusts or inherited assets or family gifts are involved.

- **Reduces stress and anxiety**

A written agreement clearly setting out what is to happen if you separate will help reduce stress and anxiety at a difficult time in your life.

What are the disadvantages of a cohabitation agreement?

Discussing a cohabitation agreement can be seen as unromantic or a lack of confidence in the relationship. There may also be pressure from wider family members to consider. The preparation of a cohabitation agreement can however be used as an opportunity to lay the foundations for a strong and secure relationship. They provide an opportunity to discuss any challenges you face now or foresee becoming challenges in the future and will help minimise the potential for conflict during the relationship.

When should I enter into a cohabitation agreement?

- If you are buying a property with a partner, friend, or family member;
- If you already own a property and your partner, friend or family member is moving in;
- If you are already living together and want to formalise your ownership or other financial arrangements;
- If you are making unequal contributions to a property purchase;
- If you wish to provide financial security for each other from your estates upon death;
- If you wish to provide financial security for your children or certainty surrounding their education.

What arrangements can we include in our cohabitation agreement?

A cohabitation agreement will record your legal and beneficial interests in your property and will set out how the property will be dealt with should you separate. For example, will it have to be sold and how will the sale proceeds be divided, or will one of you have the option to buy the other out.? Your agreement can also include clauses dealing with the following:

- What property will remain your separate property and what property is or will become joint property?
- How will gifts made between you be treated or gifts you receive from others?
- How will inheritances or unexpected good fortune be treated?
- Will you open a joint household account or any other joint bank or building society accounts, and if so, how will they be operated?
- What arrangements will you make for any current or future debts?
- How will you deal with the payment of household expenses?

- What arrangements do you want to put in place in the event of a sale?
- Do you want to put in place any financial support for one another during your cohabitation or in the event of it ending?
- Do you want to put in place any financial support for children during your cohabitation or in the event of it ending?
- Do you want to put in place any arrangement for pets during your cohabitation or in the event of it ending?
- Do you want to put in place arrangements in the event of death and nominations for pension and death in service benefits or life insurance?
- What arrangements do you want to put in place to review your agreement?
- What arrangements do you want to put in place if there are replacement or additional homes?
- What events will bring the agreement to an end?

When should a cohabitation agreement be executed?

There are no set rules on when a cohabitation agreement should be executed. If property is being purchased with the intention of it being occupied as the family home it is advisable for the agreement to be completed at the same time as completion of the purchase. This will ensure that your intentions are clear and have been recorded at the outset.

If you are moving in together after purchase of a property you can enter into a cohabitation agreement at any time. It is not critical for the execution of the agreement to coincide with the commencement of your cohabitation. It is more important to ensure that there has been time to reflect on the terms of the agreement and neither of you feel under any pressure to sign it.

What is the difference between a cohabitation agreement and declaration of trust?

A declaration of trust will simply record the parties' respective beneficial interests in a property. In contrast a cohabitation agreement can include a much wider range of issues. Please see the list above for the types of financial arrangements you may want to include in your agreement.

Watson Morris 2Unify service

Our 2Unify service offers legal expertise alongside relationship coaching. Our qualified coaches will work with you in a safe, non-judgemental way, to explore your wishes and feelings on a range of issues. With the support of a neutral third party, you may find it easier to discuss subjects that could otherwise be uncomfortable, or that you may not have considered. For more information [Watson Morris Family Law - 2Unify](#)

You can also consider using mediation or collaborative law. Mediators are trained professionals who can meet with you to work through the terms of an agreement. Alternatively, you can use hybrid mediation. This gives you confidentiality to explore options with the mediator without commitment whilst having the benefit of instant legal advice. Collaboratively trained lawyers can also meet with you to work through an agreement together.

This guide is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more information about the issues referred to in this guide, please seek formal advice.