



COHABITATION AGREEMENTS

There is a common myth that because you live with someone without being married you have the same rights as if you were married to them in the event of the relationship breaking down, or one of you dying. This is nothing more than a myth however and, in fact, in law there is no such thing as common law marriage and cohabitants at present have very few rights arising out of their relationship, nor any clear legislation to follow.

However, more and more people are choosing to cohabit rather than marry or enter into a civil partnership and given the fact that cohabiting couples do not have any more legal protection or rights than a brother or sister, or friends who happen to live together, it is important that you are aware of what your position might be in the event that the relationship breaks down. It is likely that this area of law will change but at present the relevant law is complex and unwieldy.

It is advisable for all couples considering living together, whether heterosexual or homosexual, to consider entering into a Cohabitation Agreement. This is a document which sets out the agreement between the parties, what they intend their rights to be and what will happen in the event that their relationship breaks down. Both parties will need to seek independent legal advice prior to entering into the agreement, will need to make full disclosure as to their personal and financial circumstances, and will need to be aware that they intend to be legally bound by the document. Furthermore, there can be no duress or undue influence placed on either party. The document, once finalised, will need to be signed by both parties.

Broadly speaking you can include anything you wish in a Cohabitation Agreement, but generally you would want to consider the following:

- Whether either of you have been married before, or have had children from a previous relationship.
- Who owns the property in which you are living? If it is jointly owned, in what shares it is held and if one party owns the property is it the case that the other party is going to obtain a share of it?
- Who will pay for the outgoings on the property?
- Who will undertake the maintenance of the property and pay for it?
- What each of you has in terms of capital assets, income, and debts?
- What, if any, arrangements there will be for contents?
- What will happen in the event of a child being born?
- Arrangements for any existing children.
- What will happen in the event that the relationship ends and the cohabitation ceases?

This latter point is obviously one of great importance as there is no legal process for a couple to follow when cohabitation ends contrary to the process that exists for married couples and civil partners. As a result, resolving financial issues when a cohabiting relationship breaks down can be extremely acrimonious and expensive. It is, therefore, important to think about the following issues when you consider a Cohabitation Agreement:

1. What would happen if one party decided to leave the property?
2. In relation to the property in which the couple live can one party buy the other out and, if so, how is that to be worked out? Will the property be sold and, if so, how will the proceeds of sale be divided?
3. Who will be responsible for the outgoings on the property?
4. How will the contents be divided?
5. Who will be responsible for any debts?
6. How will any other assets be divided?
7. What arrangements are going to be made in relation to the children both from this relationship and any previous relationship?

We advise that Cohabitation Agreements are regularly updated and that both parties take advice on their Wills and Inheritance Tax planning. Also Cohabitation Agreements are not necessarily easy to enforce.

For information on property rights within the context of cohabitation please see the Property and Financial Matters sections of our website.

If you would like to discuss any of the above then please contact one of our solicitors on 01908 262680 or email us at enquiries@hawkinsfamilylaw.co.uk

The contents of this fact sheet are general principles and do not constitute legal advice. Every case is different and you should seek independent legal advice in relation to your specific circumstances.