

Cohabitation Agreements

Cohabitation Agreements (also known as Living Together Agreements) are often entered into by couples who have decided not to marry or enter into a civil partnership but have instead decided to live together.

A Cohabitation Agreement is a legal agreement between such a couple recording the arrangements that they have decided between them in relation to things like the property that they live in or intend to live in, financial arrangements between them, and what will happen if they decide that they no longer want to live together.

Couples can enter into a Cohabitation Agreement before they start living together or at any time afterwards.

The following are examples of clauses regularly included in Cohabitation Agreements:

- If the parties jointly own a property, a record of any unequal contribution towards the deposit and/or a statement of the parties' respective beneficial interests in the property (although the parties may wish to enter into a separate declaration of trust in this regard).
- How the parties will contribute towards any rent or mortgage payments, as well as household bills.
- How the parties would deal with the property that they live in following separation (for example that the property shall be sold and the sale proceeds divided in a particular way).
- How the parties would deal with any joint bank accounts following separation.
- How the parties would deal with any debts following separation.
- How the parties would deal with any items that they bought together such as furniture or cars following separation.
- How the parties would support any children that they may have.

Current legislation does not entitle a cohabitee to make a claim for maintenance, or to claim a share of their former partner's assets as of right, if cohabitation ends. However, some cohabitees do want to make arrangements to support their partner financially should their cohabitation end, particularly if they have children together. A Cohabitation Agreement can include provision for such maintenance to be paid, so as to allow that party to readjust financially after cohabitation ends.

There is some uncertainty as to whether Cohabitation Agreements are legally valid and enforceable by the courts. Historically, such agreements were void on the basis of public policy. However, the view expressed by many commentators is that properly drafted Cohabitation Agreements that regulate the financial and property affairs of cohabitees are enforceable. Unfortunately there have been no recent court cases to give guidance on the question of enforceability. However, it is safe to say that insofar as Cohabitation Agreements are lawful, they are governed by ordinary rules of contract and can therefore be challenged on any of the ordinary contractual principles such as fraud, duress and undue influence, misrepresentation and mistake.

Having a well-drafted Cohabitation Agreement in place can avoid the acrimony, cost and uncertainty of litigation should the cohabitation end.