

How Cohabiting Couples should Protect their Finances

A cohabitation agreement

Historically, cohabitation agreements were frowned upon as they were seen to encourage sexual relations outside of marriage. Thankfully, times have moved on and that's no longer the case. The general view is that such agreements are enforceable if they deal with cohabittees' property and affairs, and provided they are entered into freely with full information. Often, disputes between cohabittees following separation relate to what was or wasn't intended, for example, in relation to the property in which they live. Having a clear record of the cohabittees' intentions in a cohabitation agreement can avoid expensive disputes about those issues.

Shared property

Cohabittees falling out about co-ownership of property is an all-too-frequent occurrence and a complicated area of the law. If you are simply paying 'rent' it is very unlikely you will have any rights in the event of a break-up. Paying rent assumes that the property is owned by one party and the other is paying for the ability to live there. That is different to co-ownership. If it is intended that a property is co-owned, then it is absolutely vital that is recorded in a cohabitation agreement or deed of trust. A valid declaration recording the intentions of the cohabittees regarding co ownership will, in the vast majority of cases, be held to be binding and will likely avoid the need for expensive court proceedings if things turn sour.

Jointly held assets

Contrary to popular opinion, there's no such thing as a 'common-law spouse' in English law. Simply living with someone doesn't create joint assets. Rather, any bank accounts or investments held in joint names will be considered joint assets, as will any real estate held in joint names. Equally, any items purchased using joint funds, or to which each cohabitee contributed towards the purchase price, will likely be joint assets. Things get tricky where an asset is held by one cohabitee or purchased by one cohabitee (e.g. a property), but the other cohabitee says there was an understanding that it would be shared jointly. In that scenario the court can find itself having to decide who is or isn't telling the truth. That can be a long and expensive process. It is therefore always better for any such agreements to be recorded in a cohabitation agreement. That agreement could, for example, also record that all assets will not be joint property unless held in joint names. That can remove any element of doubt.

Your pension

A cohabitee will not have any right to share in your pension during your lifetime. You are free to nominate them as a beneficiary of your pension if you pass away, but doing so does not create any rights should you subsequently (prior to death!) change your mind. If you do wish your cohabitee to receive a survivor's pension after your death, you should always make sure you nominate them appropriately using a form from your pension provider.

If you would like any further information regarding the above or would like to book an appointment to discuss the same, please do not hesitate to contact the Family Law Department on 01384371622 or email post@wjclaw.co.uk and we will be more than happy to assist you.

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