

COHABITATION AGREEMENTS

Cohabitation Agreements (or Contracts) are the best way for unmarried, cohabiting couples to regulate their assets and income if they subsequently separate.

The Cohabitation Agreement brings certainty in what is a complex and unreliable area of the law. For example:

- One party may consider that they have significantly contributed financially to the property they live in with their partner and so the property is shared, even though it is in their partner's sole name. However, the property owner may consider financial contributions to be nothing more than fair contributions to daily living costs and running of that property.
- Alternatively, a non-owning party may have been promised an interest in property which was not documented and is therefore difficult to prove.

Property such as houses and flats can be owned jointly by a couple. There are two ways of doing this. Specialist advice is recommended to determine which is best. The ownership of a property at the time of purchase may not reflect the division of the sale proceeds. For example, if one party paid the deposit and the other pays the mortgage then what shares should they each get? Again, this can be a great source of uncertainty. Changes can also occur in the relationship, most notably having children, which can further affect what the parties may wish to happen to the property in the event of a separation.

All these scenarios are common problems, but they can be clarified with an agreement that clearly sets out each party's intentions.

Cohabitation Agreements can be entered either at the start of, or during, the relationship. We can advise on the benefits of entering into such an Agreement and prepare the necessary documentation.

The Law

The law for the separation of assets and income for cohabiting or unmarried couples in England and Wales is much misunderstood. There is a widely held view that the longer the relationship lasted the greater the entitlement to a share of assets and income - which is not true. Also, that in a "common law marriage" a "common law spouse" can benefit from the standard divorce claims on separation. This also is not the case.

Despite plans to reform the law, such cases are still dealt with under strict property law and the law of trusts – under the Trust of Land and Appointment of Trustees Act 1996 (also known as TLATA or TOLATA). There is the added complication of possible claims for children under the Children Act 1989, and Child Support Agency/Child Maintenance Service.

Generally, the settlements, other than for the benefit of the children, are beneficial to the property-owning party. The court has no ability to award lump sums, transfer property or share pensions to a separating cohabitee for themselves. There is also no provision for the equivalent of spousal maintenance, save in exceptional circumstances.

However, under the Children Act, parents caring for children may have a claim for capital to purchase a property, cars or to meet other capital needs, whilst the children grow up. In appropriate cases, the Cohabitation Agreement can also be used to set out how the couple would parent their children in the event of a separation.

We can advise as to the consequences of separation, which are often very different from the settlement that would have been achieved by married, or in some circumstances engaged, couples.

We also have the necessary expertise in relation to the property and tax issues that frequently arise in such cases. The tax implications are often ignored and can be expensive to rectify.

Benefits of a Cohabitation Agreement

- Establish your entitlement
- Protect your future and your children's future
- Reduce the risk of conflict when living together
- Simplify matters if you separate
- Save money on legal costs if you separate

How can GL Law help you?

We have specialist lawyers who will take time to get to know you in order to provide you with advice tailored to your specific needs and wishes.

Full and transparent information about our fees structure will be provided at the outset, and the basis of our charging agreed before we begin work.

For more information or to speak to a solicitor please contact us by calling 0117 906 9400 or email hello@gl.law

The content of this guide is intended for general information purposes only and shall not be deemed to be or constitute legal advice.

6 Queen Square Bristol BS1 4JE
0117 906 9400
hello@gl.law