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### Cohabitation Property Rights for Unmarried Couples

When unmarried couples live together for a while, it is likely that they accumulate a good amount of property. In this case, it is in each person's best interest to write out a property agreement that spells out who owns what and how the property will be distributed should the couple separate. This is especially important if a couple acquires real estate together. On the other hand, this agreement is probably not necessary for couples who have only lived together a short time and do not have much property.

Without an agreement, you could face expensive and time consuming legal battles, defending your property rights. This trouble can be saved by each party entering an agreement they both consent to, while the relationship is sound.

#### **What a Cohabitation Property Agreement Should Include**

A cohabitation property agreement is about you and your partner, and therefore, should include what meets the specific needs of your relationship. Most agreements include the following:

- How specific assets are owned
- Whether or not, and how, income and expenses are shared
- How newly acquired assets are owned
- How bank accounts, credit cards, insurance policies, etc. will be managed
- How specific assets will be distributed in the event of a separation, or what process will be used for resolving disputes of property rights

#### **How to Cover your House in a Cohabitation Property Agreement**

Because buying a house together is such a huge financial responsibility and can carry emotional ties with it, including the purchase of your home in your cohabitation property agreement is particularly important. Take extra care with your plans to ensure that you do not cut yourself short of your property rights. This part of your contract should cover at least the following:

- **How the ownership is listed on the deed of the house.** If you own the house as "joint tenants with right of survivorship," when one of you dies, the other automatically inherits the entire house. If you own the house as "tenants in common," when one of you dies that person's share of the house goes to whomever he or she names in a will or trust. If the deceased person does not have a will or trust, his or her portion of the house will go to blood relatives according to state law.
- **How much of the house each partner owns.** Additionally, you should include how any portion of the home can be transferred between the partners. For example, if the one who owns less can acquire more by making improvements or mortgage payments, this should be specified in the agreement.
- **The buyout rights, if any, and how the house will be appraised.** Usually, people decide to have their original realtor appraise the house. Then, they allow one partner no more than five years to pay the other partner for the home. This varies, and should be specified to your own specific needs.
- **What happens to the house if you break up.** Decide how the proceeds will be divided upon a sale, who will stay in the house if it is not sold, or what your buyout plan will be.

#### **Support Payments**

Many people use the term "palimony" to refer to support paid to an ex-partner when the couple was never married. Palimony is not a legal term and carries no legal significance. In fact, members of unmarried couples have no rights to

support, unless the two have previously agreed on it. To avoid a tense disagreement about palimony, it is in the couple's best interest to include whether or not support will be paid in a written agreement. Recently, the California Supreme Court ruled that an ex-partner could sue for support if he or she could show that an implied contract existed between the two.

### **Importance of Including Income in a Cohabitation Property Agreement**

Creating a cohabitation property agreement in the beginning, while the relationship is still sound can avoid a lot of tension, disagreement, and hassle should the couple break up. Property that is owned separately could be changed by the circumstances or by one of the partners claiming that there was an agreement to something, when there really was not. This becomes even more important when one of the partners makes significantly more money and supports the other partner who has little or no income.

Example: Pat and Sam are unmarried partners who decide to move in together. Pat is a successful surgeon, and Sam is unemployed. They use Pat's income to purchase a home that Sam will fix up. To protect their individual property rights, just in case they break up, they decide to enter into a written cohabitation property agreement. In the agreement, they decide that after Sam completes the home improvements according to the couple's plans, they will become joint tenants with the right of survivorship. They also agree that all furniture and fixtures that they place in the home will be owned and divided equally, should they break up. Their agreement explains that if the couple breaks up, that Sam would remain in the house to care for their child, but that Sam will compensate Pat for Pat's portion within 5 years. Aside from this house payment, no support or other payments will be exchanged between the couple.

### **Liability for Debts**

Unmarried partners are not responsible for each other's debt unless they have a joint account or one is a cosigner or guarantor for the other. This is different from married partners who can be held liable for marital debts. In some states, registered domestic partners are responsible for all debts acquired for basic living expenses, like food, shelter, and clothing.

### **Property Rights of a Surviving Cohabiting Partner**

Unless a partner leaves property to the other by will or trust, a surviving partner has no property rights to the deceased partner's individual property. Of course, if the couple owns real estate as joint tenants with rights of survivorship, then the surviving partner will inherit the deceased partner's half. Some states that recognize domestic partnerships do have rights to inherit a portion of the deceased partner's property. However, the best way to provide for the surviving partner is by leaving a will or living trust.

Property agreements are very important and useful tools for protecting the property rights of unmarried, cohabitating partners. The agreement should be designed according to the couple's specific situation. If your certain circumstances are complicated or you have questions about how your property rights can be affected by your relationship, consult a family law attorney.

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