

## **Athlete's Playbook: The Benefits of a Cohabitation Agreement for Unmarried Couples**

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Long gone are the days when the majority of young adults live at home with their parents until they are married. Indeed, according to some studies, cohabitation is the fastest-growing living arrangement in the United States. But sharing a home with someone without being married brings with it financial responsibilities, legal risks and other issues to consider. Laws governing marriage generally addressed those responsibilities, risks and issues, providing clarity to married couples on what life looked like during and after a marriage.

However, for many unmarried partners who cohabit today without a legal marriage to govern the relationship and associated ramifications, a cohabitation agreement could prove useful to avoid costly and contentious separations. As a couple's lives become more intertwined, it can be more complicated (and expensive) to resolve the issues arising from a breakup or the death of a partner after living together for many years. Thus, the ideal time to draw up a cohabitation agreement with your partner is before you move in together, or soon thereafter.

### **What Is a Cohabitation Agreement and What Should be Included?**

The cohabitation agreement is a tool that can offer legal clarity on property division and minimize other future conflicts should unmarried couples go their separate ways. It is a form of contract that sets out each party's respective rights and responsibilities with respect to the home they share or propose to share. While there are no set rules for what a cohabitation agreement should cover, an ideal cohabitation agreement should deal with issues involving property, debts, living expenses, inheritance rights, financial arrangements, personal belongings, children (if any) and decisions related to healthcare and other estate planning considerations.

As far as finances are concerned, the cohabitation agreement can specify the parties' interests in any bank accounts, retirement savings and other assets and include obligations related to how the couple will handle financial contributions toward their lifestyle. In order to minimize future conflicts upon a separation, the agreement may contain schedules of each party's respective assets, personal belongings, debts and other property. The agreement should also address how the parties will identify and divide assets to which both parties contributed during the relationship and how they will manage access to the couple's primary residence after the separation.

Given the lack of a legal relationship like marriage, the agreement might also consider the obligations of each party to the other upon separation and death. For example, will one party pay the other party a lump sum upon separation or contribute financially to

the other party during the transition and separation of the parties' lives? How will joint assets be divided? Which party will have the right to reside in the couple's primary residence? Additionally, addressing inheritance rights of each partner can avoid the unintended disinheritance of a surviving partner.

In some cases, a cohabitation agreement can (and should) address nonfinancial matters, like healthcare directives and child and family obligations. For example, if the couple has children, the cohabitation agreement can outline how the couple will handle the responsibilities of raising children together, including custody preferences and financial contributions towards child support, even if the children are not the children of both partners.

### **How to Set Up a Cohabitation Agreement**

Before setting up a cohabitation agreement, it is recommended that you check your state laws. In most states, cohabitation agreements are legally binding as long as one partner did not force the other to sign the contract and the agreement does not contain any provisions contrary to state law. The parties should also fully disclose all of their assets and liabilities and exchange documents with each other. If the agreement abides by these conditions, then most state courts will uphold the cohabitation agreement.

It will also be important to understand and address whether the state where the couple resides recognizes common law marriage and the implications of such laws on the parties' relationship.

### **Conclusion**

A cohabitation agreement is advisable for couples who are living together without being married, especially if they share significant assets, have large disparities in wealth or income, or want to clearly define ownership of property and financial responsibilities. The agreement can be beneficial both during a relationship and after it ends because it provides clarity about financial responsibilities, property ownership and other important aspects of a shared-living situation, which can prevent misunderstandings and disputes, especially in the event of breakup.

For more information or questions, please contact the authors, who are experienced estate and tax planning practitioners in Holland & Knight's [Private Wealth Services Group](#), where they partner with the firm's [Sports Industry Team](#) to counsel athletes and their families on legal matters related to NIL transactions and compliance, tax and estate planning.