

Focus | Family Law

Why Unmarried Couples May Need a Cohabitation Agreement

BY CAROL WILSON

Marriage isn't for everyone. For various reasons, a couple may decide they don't want to get married, but they do want to live under the same roof. That is all well and good—until it isn't.

Many long-term unmarried couples, especially those with significant assets, mistakenly believe they are immune to financial disputes upon separation. For Texas couples living together in long-term relationships, particularly if one or both partners have significant or complex assets and liabilities, a non-marital cohabitation agreement may be advisable.

Is It or Isn't It a Common-Law Marriage?

Long-term couples living together in Texas face complications due to the state's recognition of common-law marriage. It is not out of the question for such couples to be mistaken as common-law married—or for one of the partners to claim the relation-

ship was a common-law marriage because it financially benefits them to do so.

Under Texas Family Code §2.401, a common-law marriage (also known as an informal marriage) must meet three criteria:

1. Both parties must have a mutual understanding that they are married to each other.
2. They must live together as spouses in Texas.
3. They must represent themselves to others as married.

All three of these elements must be present for a common-law marriage to be recognized in Texas, **unless the couple has filed a declaration of informal marriage.** A declaration of informal marriage formalizes your union in the eyes of the law, providing a clear record of your marital status. The County Clerk has the form, and it must be filed with the County Clerk in the county where you live.

Already married? You can't be a party to a common-law marriage and be ceremo-

nially or common-law married to someone else at the same time.

The Need for a Cohabitation Agreement

Even if neither partner believes the relationship is a common-law marriage, a long-term couple that lives together may want to consider entering into a non-marital cohabitation agreement. It is a legally binding contract that outlines the financial and legal rights and responsibilities of two unmarried individuals living together. It can provide crucial clarity and protection, especially in situations where:

- Significant financial shifts occur: If one person is about to receive a substantial sum of money—whether it is an inheritance, a personal injury settlement, a large signing bonus, or the liquidation of significant stock options—a cohabitation agreement can protect those assets from potential future claims by the other partner.
- New business ventures of one person: If one partner starts or invests in new business ventures, that person may want to make it clear that the new business, both the profits and the possible losses, are that person's alone, not the joint property of the two people living together.
- Joint property ownership exists: When unmarried couples purchase a home together, they usually become joint owners. Without a clear agreement, the default assumption is 50/50 ownership, including both assets and liabilities, such as the mortgage,

repairs, and maintenance. This can lead to significant disputes, especially during separation.

- One partner wants to leave the relationship: If one partner decides to end the relationship, a cohabitation agreement can prevent costly and contentious legal battles. It provides a roadmap for dividing assets, addressing debts, and determining other important matters, such as pet ownership.

Why You Need Legal Counsel

Drafting a comprehensive and enforceable cohabitation agreement requires careful legal expertise. An experienced family law attorney can:

- Help you understand the legal implications of cohabitation and the importance of a well-drafted agreement.
- Ensure that the agreement accurately reflects your intentions and safeguards your financial future.
- Help you anticipate potential conflicts and draft provisions to address them proactively.

Granted, negotiating and executing a non-marital cohabitation agreement isn't romantic. But particularly if their long-term plans do not include marriage, it is a smart move for those looking to avoid or minimize future litigation and legal fees. **HN**

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