

• COHABITATION AGREEMENTS FOR UNMARRIED COUPLES

Many couples choose to enjoy a relationship without the legal bond of marriage, and spend any number of years living together in property that is either jointly owned or owned in the name of one of the parties, often for reasons such as the lack of Jersey housing qualifications.

It is the largest financial obligation they are ever likely to enter into and the process can take an enormous amount of thought, saving, organisation, and stress to achieve. With all the effort and planning, people rarely consider what the terms of their financial arrangements will be nor how their financial arrangements would be dealt with if the relationship fails and the dream home becomes the centre of their nightmare. Rarely will anyone mention cohabitation agreements when embarking on moving in together, which should be a primary consideration in view of the fact that there is no basis in law for what is generally referred to as a "common law spouse".

In the UK there is legislation to assist in these disputes which deals specifically with property rights where it is held in joint names. Also, there is an increasing level of case law dealing with property rights and implications of resulting trusts and constructive trusts and also quantifying the parties respective shares in the property. Recent developments, including *Oxley v Hiscock*, and *Stack and Dowden* guide the Courts in the UK when dealing with such matters and the Law Commission has formulated proposals for reform of the legislation relating to property rights of unmarried couples.

Jersey is, not unusually, quite different. We have no legislation dealing with property rights in co-habitation or co-ownership situations, and whilst UK case law can guide lawyers in negotiations on the issues involved, if the parties cannot negotiate a settlement in these circumstances, the only course of legal action where property is jointly owned is Licitation proceedings before the Royal Court. This is an enforced sale in which the Court will order the property be sold by public auction, at which any member of the public, including a co-owner, is free to bid. The Viscount is normally required to effect the sale by auction. Once sold, either party may wish the Court to establish the level of division of the proceeds of sale on the basis of contributions of each of the parties. Did one pay the mortgage whilst the other paid all the bills and the holidays? If applicable, who paid the children's school fees whilst the other paid for the new kitchen or the new car? Are these contributions relevant to the division of the proceeds of sale and, if so, how are the relevant contributions factored into the calculations after all the legal fees and disbursements have been paid. It will come as no surprise to anyone that this procedure is extremely costly and time consuming, often eating away at any equity that is the focus of the dispute in the first place. *Ritson v Slous* is a relevant judgment on the subject of Licitation, but there is only limited Jersey case law on Licitation, perhaps indicative of the fact that it is not an attractive procedure for anyone to embark upon. Common sense, and good guidance from their lawyer, should prevail and parties should negotiate a settlement rather than the costly and cumbersome (only) alternative of Licitation.

Jersey also has the added issue of housing qualifications and where one party does not have housing qualifications they cannot own the property jointly, nor attempt to take it over following the relationship breakdown. Whether owned jointly or in the sole name of one party, all couples should consider a cohabitation agreement to secure their share of the joint investment, to set out the contributions each party has made to any purchase, the mortgage and household bills and utilities and to identify how the financial arrangements will be separated following any relationship breakdown. In circumstances where the property cannot be in joint names there can be no Licitation proceedings, and the non-qualified cohabitee will be at a considerable disadvantage if there is no adequate cohabitation agreement in place setting out their financial arrangements and the hopes and views of each of them. Without that their remedies are solely reliant on goodwill, which may be non-existent if the parties are on bad terms by that stage. Alternatively, there may be the possibility in certain scenarios to seek to establish a claim based on proprietary estoppel, where one party can argue that there was a joint venture in which certain promises were made that one party would get "x" if they did "y", and that they did "y" but "x" was then denied them; in such a case "x" may be claimed. However these cases can often be difficult, and enormously costly, to prove.

It is rare that any two Cohabitation Agreements will be the same, as they can include any matters that either party feels are appropriate to their own particular circumstances. However, whether already living with a partner or contemplating making such a commitment, drawing up a Cohabitation Agreement may help to remove the cost implications of a relationship breakdown and make a difficult transition just a little easier to manage.

**FOR MORE INFORMATION,
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