

BRIEFING NOTE

Author: Anne-Marie Webber

Family

June 2011



DOWNNS
YOUR COMPETITIVE EDGE

156 High Street, Dorking, Surrey RH4 1BQ T: 01306 880110 F: 01306 502283 DX 57300 Dorking
The Tanners, 75 Meadrow, Godalming, Surrey GU7 3HU T: 01483 861848 F: 01483 861856 DX 58308 Godalming1
www.downslaw.co.uk

SETTING UP HOME TOGETHER? DO YOU NEED A CO-HABITATION AGREEMENT?

What is a Co-habitation Agreement?

A Co-habitation Agreement can cover a number of issues but most importantly it will set out who owns what proportion of the property where, for example, one party is contributing more to the deposit than the other. Some parties will also use the Agreement to set out who is to be responsible for the mortgage payments and any bills. The Agreement can also make provision for a change of beneficial ownership if any work is carried out to the property but funded by only one party.

A Co-habitation Agreement is used by unmarried couples who live together but a similar type of agreement can also be used by friends or siblings purchasing a property in joint names.

The Agreement can also cover the scenario where one party is to move into property which is owned in the sole name of the other party.

Why do I need one?

There is a common misconception that once an unmarried couple have lived together, (especially if they have done so for a prolonged period of time) they become a common law Husband and Wife and acquire the same rights as married couples. This is false.

Unmarried couples do not currently have any of the same rights as married couples and although the Law Commission has recommended that the law is changed to provide limited rights there are no firm plans to do so at the moment.

The Agreement is useful to anyone purchasing property with another person as it helps to formalise the financial arrangements and to cater for what ought to happen if things break down.

Can't we just choose to own the property as Tenants in Common?

Yes you can but you should also consider entering into a Co-habitation Agreement. For example, declaring that you intend to hold the property as Tenants in Common based on your contributions to the deposit will not always reflect the way in which you will each contribute to the property whilst you live there, and what should happen if one party fails to make a contribution that was expected of them at the outset..

Is an Agreement legally binding?

Yes. Co-habitation Agreements are treated as a contract between the owners of property and providing the basic formalities of contract law are met the agreement should be legally enforceable.

What will happen if I don't have one?

This is likely to become a problem if you separate from the person with whom you have bought the property. When married couples separate there is specific legislation which provides guidance as to how the assets should be split and most importantly allows a court to alter ownership or make other awards according to what it thinks is fair.

Whilst there is legislation to assist when co-habiting parties separate, this is much more limited. The Court cannot alter property ownership, it can merely declare who actually owns it and in what



shares. In the event that you are unable to reach an amicable settlement it will be necessary to issue a Court application to resolve this issue. You could become involved in lengthy and uncertain litigation which may take years and thousands of pounds to resolve. A well-drafted Co-habitation Agreement demonstrating your intentions is less likely to result in this, because the court is likely to find it is bound by its terms.

How much will the Co-Habitation Agreement cost?

For a straightforward Agreement we would usually estimate the cost to be £500 plus VAT. We understand that in addition to the costs of moving and buying a house this may seem a costly extra but it should be compared to the potential cost of legal proceedings which may be issued if you don't have an Agreement.

I want to find out some further information, what do I need to do?

Our specialist family department can offer you a fixed fee initial consultation to discuss this with you in more detail. The charge is £60 (including VAT) for a no-obligation appointment.

For further information regarding co-habitation agreements or to make an appointment please contact Anne-Marie Webber on [01306 502226](tel:01306502226).

Details of our full range of legal services can be found on our website at www.downslaw.co.uk