

79 Garfield Road, Claremont, 7708, Cape Town  
P.O. Box 44533, Claremont, 7735, Cape Town  
Tel: 021 6715454 / Cell: 083 9491590 / Fax: 086 5451498  
rta@iburst.co.za

## **Cohabitation (or Domestic Partnership) Agreements**

*Domestic partners are generally two adults who live together as partners whereby they share an emotional, physical and financial relationship. Their relationship is similar to that of a married couple, but for whatever reason they choose not to marry.*

If you are involved in a domestic partnership or long-term relationship, there may be unwanted consequences in the event of death or a break-up without a cohabitation agreement. Legally you and your partner may be treated as total strangers. This can be avoided if you have a Cohabitation Agreement in place.

With the high divorce rate and the link between marriage and religion, some people may prefer to cohabit or live together, rather than marry.

Cohabitation includes any two people who have integrated their residence, property and daily lives as partners. Often it is a starting point for a couple headed toward marriage, but can also be an ultimate arrangement for couples who don't want the social, personal and legal commitments that marriage represents.

There are numerous other reasons individuals may cohabit, including:

- Convenience;
- Sharing and reducing living expenses;
- Being committed to a relationship but not subscribing to the conventional idea of marriage;
- Allowing previously married individuals to live together who don't want to upset family or friends through remarriage.

During such relationships, the parties may contribute to a joint bank account, purchase property, pay off debts for the other, and generally conduct themselves in a form of partnership arrangement. In order to avoid disputes in the future, in the event of the breakdown of the relationship, or the illness of one of the parties, many people reduce their arrangement to writing, covering some of the following:

- Distributing property in case of death or separation (who gets what).
- Obligating financial support during the relationship or upon its dissolution.
- Handling the payment of debts.
- Acquisition of fixed property.
- Dividing the principal residence upon the end of the relationship.

- Defining support, custody or visitation rights for minor children.
- Specifying medical aid coverage.
- Determining the right to serve as guardian in the event of incapacitation.
- Establishing the right to make medical decisions.
- Financial responsibilities for maintaining the joint estate.
- Management and control of business ventures or investments (whether jointly acquired or brought into the relationship).
- Financial support in the event of the disability or unemployment of a party.

This list is almost limitless, and can be tailored to the particular needs of each couple. The Cohabitation Agreement will be *your* contract and you can decide what you want to include.

Remember that to enforce a written agreement is far easier than relying upon a verbal agreement.

In general, the agreement allows you to specify who keeps specific assets and what will happen to assets that have been purchased jointly in the event that you separate.

Cohabiting couples do not have the same rights as married couples under the law, so it makes sense to set out what the division would be if the cohabitation breaks down. The best time to do this is when things are going well between you. It is also a sign of your commitment to each other and your relationship.

It is also advisable that each party makes a Will; otherwise any assets he or she owns will go to the next of kin and not to the partner.

If you would like a sample of a Cohabitation Agreement please e-mail us.

**Note: It is crucial to consult an attorney who specialises in drafting contracts to assist you in drawing up a tailor-made agreement!**

