

The Mishcon de Reya Cohabitation Agreement



Mishcon de Reya

The *Mishcon de Reya* cohabitation agreement offers peace of mind in relation to the ownership of property in which you and your partner live. It also regulates other important financial aspects of your life together.

THE MISHCON DE REYA COHABITATION AGREEMENT

I live with my partner but we're not married. What legal issues do I need to know about?

According to recent figures there are now more than 3 million unmarried couples living together in the UK. The number of couples choosing to live together without getting married or entering into a civil partnership has doubled in the last 15 years.

The separation rate for cohabiting couples is as high as the divorce rate for married couples.

In English law there are clear rules regulating the division of the income and assets of divorcing couples. There are also specific rules on who gets what following the death of a spouse or civil partner.

In contrast, there are no specific laws that regulate the financial arrangements of separating cohabitants. Unmarried couples are viewed by the law as completely unrelated to one another. There is no concept of the "common law spouse" in English law and nor are there any equivalent divorce laws for unmarried couples, no matter how long they have lived together. Similarly, a cohabitee will ordinarily be entitled to nothing on the death of the other cohabitee.

The death or separation of cohabitants can therefore give rise to significant legal complications. Unless a legally binding agreement has been put in place setting out the financial consequences of the death of one of the cohabitants, or their separation, the ownership of their assets will be divided on the basis of complex property and trust law rules. This can frequently give rise to expensive litigation resulting in outcomes that neither party necessarily intended.

The Mishcon de Reya cohabitation agreement offers peace of mind in relation to the ownership of property in which you and your partner live. It also regulates other important financial aspects of your life together. While it may seem insensitive to discuss what may happen if your relationship ends, it is often better to agree in the best of times what should happen in the worst of times if that means you can avoid litigation.

THE MISHCON DE REYA COHABITATION AGREEMENT

What is a cohabitation agreement and why do we need one?

A cohabitation agreement offers financial certainty to you and your partner if you are in a committed relationship but do not wish to marry or enter into a civil partnership. It covers who owns the home in which you live and, if jointly, in what proportions. It also covers who is going to pay the bills and what you both expect to happen to the property if your relationship ends or on the death of either partner.

If you do not have a binding cohabitation agreement, it is possible that following your separation or death, a Court may alter the shares in which you intended to own your home.

In one recent case the Court significantly varied the shares in which an unmarried couple owned their home. They originally purchased a property jointly. Some years later, following extensive litigation, the Supreme Court altered their shares from 50:50 to 90:10. This was because the Supreme Court decided that even though there was no written evidence of the couple's intentions, the Court could infer that the couple's intentions had changed over the years of ownership, meaning that they no longer intended the property to be owned in equal shares.

The Mishcon de Reya cohabitation agreement makes it clear that you do not wish the basis of the ownership of your property to change in the future even if your circumstances change. This will prevent the Courts from imposing their own view of whether your intentions change over time and therefore creates certainty in the event of a future sale of the property or a dispute over ownership.

CASE STUDIES

1 Joy and Suzie

Joy owns a house in Finchley worth £1 million. She decides that she would like her partner Suzie to move in with her, but she does not want Suzie to own a share of the property. Suzie agrees.

The cohabitation agreement will make it clear that Joy owns her house in her sole name and that she will continue to do so, regardless of any payments Suzie makes towards the upkeep of the house or towards bills.

2 Bob and Julie

Bob and Julie both contribute to the purchase of their £1.3 million house in Suffolk. Bob contributes more than Julie. They have previously lived together for many years and they want the property to be shared equally between them.

They are not concerned about protecting their own initial contributions or the fact that Bob contributed a larger amount to the purchase price. They want everything to be owned equally whether or not the house goes up in value. The document will provide for this.

3 Steve and Caroline

Steve buys a house for £1.9 million. He contributes £1 million of his own money and obtains a £900,000 mortgage.

Steve has decided that he would like his girlfriend, Caroline, to have a share of any future profits in the house. This means that she may receive some of the proceeds of sale if they sell it in the future or if they ever split up and it is then sold.

When the house is sold in the future, the mortgage of £900,000 will be deducted from the sale proceeds. Steve would also like his £1 million contribution back. He would then like any remaining profit on the sale of the property to be split in the shares 90:10 between him and Caroline respectively.

Steve is happy to take full responsibility for the mortgage himself.

This means that the position under the cohabitation agreement will be as follows:

- If Steve were to sell his house tomorrow and the value hadn't changed, the net proceeds of sale would be £1 million after deducting the £900,000 mortgage.
- Steve would then take back his initial contribution (£1 million) and Caroline would take nothing as there has been no increase in value in the house.
- If the house were to be sold for £2.1 million, after deducting the £900,000 mortgage and giving Steve back his initial contribution of £1 million, there would be a profit of £200,000. Steve would take 90% of the profit (£180,000) and Caroline would take 10% of the profit (£20,000).
- Conversely, if the house dropped in value to £1.85 million when Steve sold it, there would be no profit. Steve would take all of the net proceeds and Caroline would take nothing.
- In the unlikely event that the property were to drop in value below £900,000, Steve would be solely responsible for the mortgage shortfall.

4 Rishi and Maria

Rishi and Maria have decided to live together. They are buying a flat in Hampstead for £2 million. They will be joint legal owners of the flat. Rishi will contribute £500,000 to the purchase price whilst Maria will contribute nothing. The mortgage accounts for £1.5 million.

Rishi wishes to protect his initial contribution to the flat. If the flat has increased in value in the future, he would like his initial contribution to be “indexed” to reflect this. In other words, his contribution would be treated as having increased by the same percentage as the increase in value of the flat. They would then like any profits on the flat to be shared between them equally, after the mortgage has been repaid and Rishi’s indexed contribution of £500,000 has been returned to him.

This means that the position under the cohabitation agreement will be as follows:

- If Rishi and Maria were to sell their flat tomorrow and the value hadn’t changed, the net proceeds of sale would be £500,000 after deducting the £1.5 million mortgage.
- Rishi would then take back his initial contribution (£500,000) and Maria would take nothing as there has been no increase in value in the flat.
- If the flat were to increase in value to £2.4 million, there will be a profit of £400,000. The proportionate increase in value is calculated by dividing the profit (£400,000) by the original purchase price (£2 million), which amounts to 20%.
- Rishi’s initial contribution is therefore indexed by increasing it by 20%
i.e. $£500,000 + £100,000 = £600,000$.
- If Rishi and Maria were to sell it at that point, after deducting the £1.5 million mortgage and giving Rishi back his indexed initial contribution of £600,000 there would be a profit of £300,000. Rishi and Maria would each take 50% of the profit (£150,000 each).
- The couple have also agreed that Rishi will pay just 5% of the monthly mortgage repayments to service the mortgage whereas Maria will pay 95% of the mortgage repayments. This will be recorded in the cohabitation agreement.

5 Boris and Adam

Boris and Adam have decided to move in together. The house they are buying in Surrey is worth £10 million. The house will be in Boris' sole name. Boris will contribute £8.7 million to the purchase price and Adam will provide £300,000. There is a £1 million mortgage in Boris' name.

If the house increases in value in the future, Boris and Adam would like their initial contributions to be "indexed" to reflect this. They would like Adam alone to receive any profits on the house, after their indexed contributions have been returned to them.

This means that the position under the cohabitation agreement will be as follows:

- If Boris and Adam were to sell their house tomorrow and the value hadn't changed, they would each take back their initial contributions after paying off the mortgage.
- If the house were to increase in value to £14 million, there will be a profit of £4 million. The proportionate increase in value is calculated by dividing the profit (£4 million) by the original purchase price (£10 million), which amounts to 40%.
- Each of their initial contributions is therefore indexed by increasing it by 40%. Boris' indexed contribution will be £8.7 million + £3.48 million = £12.18 million. Adam's indexed contribution will be £300,000 + £120,000 = £420,000.
- If Adam and Boris were to sell the house at that point, then after repaying the mortgage of £1 million and giving each of them back their indexed initial contributions of £12.18 million and £420,000 there would be a profit of £400,000. Adam will take all of the profit, as agreed between them.

- The cohabitation agreement will also state that Boris alone will receive all of the income if they ever rent out the house, as this is what they have decided between them.

6 Viktor and Matilda

Viktor and Matilda are buying a flat in St John's Wood for £500,000. For confidentiality reasons Matilda does not want to be named as a legal owner of the property but she is contributing £50,000 to the purchase price. Viktor is paying the remaining £450,000. They have decided that their respective contributions to the flat will reflect their ownership shares. Viktor will therefore own the flat on behalf of himself and Matilda so that Viktor will always receive 90% of the net sale proceeds and Matilda will always receive 10%.

Viktor and Matilda are also thinking of renting out the property. Viktor would like Matilda to receive 90% of the rent as she is a lower rate tax payer, even though she only owns 10% of the flat.

Again, all of these points will be recorded in the cohabitation agreement.

WILLS

It would also be prudent for each of you to make a Will alongside the cohabitation agreement. A Will can always be changed, but if there is no Will in place then your estate will automatically pass to your family, or HM Revenue and Customs, rather than your partner.

It doesn't matter how long you have been living together – if you have not made a Will then in most cases your partner will receive nothing on your death if you are not married or in a civil partnership. That may result in the property having to be sold and your partner losing their home.

If you are not married, your partner will also not automatically be entitled to administer your estate after your death unless you expressly appoint them as executor in your Will.

Our experienced estate planning lawyers would be very happy to prepare Wills for you both, taking all of your needs into careful consideration.

For further information or to arrange a meeting, please contact



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Disclaimer :

This is a very basic summary of a complex area of law and taxation. It is not to be taken as legal advice. Before acting or omitting to act in relation to your UK tax position, you should always take specialist tax advice.

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