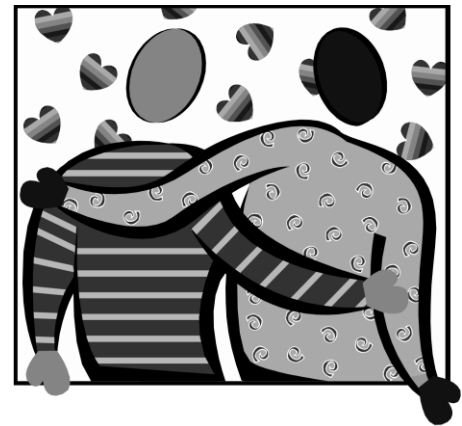




Unmarried Couples, Debt and Property

When people get married, there are legal rules that apply to the relationship. These rules also control things if their marriage ends in divorce. For example, when married people get divorced, Minnesota law says the stuff they own will be divided fairly between them. It doesn't matter who paid for what. When a couple lives together without getting married these rules do not apply.

If you and your partner don't want to get married it is a good idea for the two of you to decide what happens with your shared things if your relationship ends or something happens to one of you. If things end up in court, it is a lot easier if you make an agreement from the start.



Am I responsible for my partner's debts?

You are not responsible for your partner's debts just because you live together. You are only responsible for debts that you have agreed to pay. This means debt that is in your name or you signed an agreement saying you will pay.

If you and your partner have a debt in both of your names, then you are both responsible for paying it.

For example: if you have a credit card with both of your names on it you both have to make sure that the bills get paid. It doesn't matter who bought the stuff or if one of you didn't want to buy it.

We have verbal agreements about things, is that enough?

The problem with having a verbal agreement is they can be hard to prove. It can be hard to convince a judge that there was an agreement and that you followed your part of the agreement.

For example: if you agreed to do remodeling projects in exchange for being put on the title of the house, you need to show the judge proof that you did the remodeling projects, how much money and time you spent, and the value they added to the house. You need to convince the judge that you did these things because you believed there was an agreement. Because there is no written document the judge can look at, it comes down to who the judge believes. You will lose your case if the judge believes your partner and not you.

Unless you have a written agreement, it is not good enough that your partner agreed to share his or her income or put your name on the title to the house in exchange for something. It is also not good enough to say your agreement was based on “being a family.”

If you and your partner break up and end up in court, a written agreement can make things easier.

If you don’t have a written agreement, the stuff you bought while you were together will generally be divided based on who paid for what. Any money that the two of you had will be split based on who earned it. Joint purchases will either be split, or one of you might have to pay the other back for the amount he or she put in.

For example: If you bought a house in both of your names, a court can “partition” or split up your rights. The court may decide that you each have a right to half of the house (50-50). Or the court may decide that one of you should get less than the other. The court may order that the house be sold and the money split according to each person’s share.

If your partner owns the house and you do not have a written agreement, it is very hard to convince the court that you have some right to the house. You can tell the court about money or time you put into improving the house, money you spent on household expenses, or time you spent caring for the children, but the court may still decide you do not have any rights to the house and you could get nothing for it.

Written agreements

Having things in writing is usually a good idea. You and your partner should think about making a “cohabitation agreement.” A cohabitation agreement is a written agreement between the 2 of you that describes the property and money in your relationship and lays out what you want to happen if your relationship ends.

If your relationship ends because you and your partner break up, you will know exactly who should end up with what property and who should pay what debts.



Cohabitation agreements do not replace a will, but courts will enforce them if the relationship ends because one of the partners dies.

In Minnesota, cohabitation agreements **have to be in writing**. If you and your partner only have a verbal agreement, the court may not enforce it. For a written agreement, you need to write down all of the important things you and your partner agree to and then both of you need to sign the agreement.

How do I know if I need a Cohabitation Agreement?

Cohabitation agreements say what happens to property, money, and debts. They are a good idea anytime you are living with your partner long-term or are combining and sharing income and assets. The longer you are together the more important it is to have a cohabitation agreement.

They can be very important when there are big financial differences between you and your partner. Like when one person makes the money and owns the home while the other person stays at home and cares for the children.

There are other ways to show your rights to property and money, but it can be more difficult and may involve more court time than a simple cohabitation agreement.



What makes the agreement legal?

- 1) Written
- 2) Signatures
- 3) "Consideration"

Your agreement needs to be written and signed. Your agreement must also include "consideration." Consideration means that something is given for something else. For example, you share your partner's income **in exchange** for staying home to care for the children. Consideration does not have to be equal. It is up to you what you want it to be, you just need to give details about it in the agreement.

What should not be in our Cohabitation Agreement?

It is generally not a good idea to mention your sexual relationship in the cohabitation agreement. A court may not enforce an agreement that uses a sexual relationship as consideration for the agreement, so it is better to just leave it out.

Courts will only enforce cohabitation agreements when the relationship is over. Skip adding things about who will do what chores or pay which bills while you are together. You can make your own, separate agreement about who will do what in your household, but courts will not enforce these agreements.

What things should be in our Cohabitation Agreement?

When you and your partner write your agreement, think about the important things in your household. Your agreement can be detailed and cover every financial part of your relationship, or it can just cover a few things, like bigger items you bought. Here are some good things to think about putting in an agreement:

Property and Other Assets

It is a good idea to list all of the property and assets you or your partner owns. Assets are things like money, retirement accounts, stocks, and anything else you could trade for money. You and your partner should decide if and how you will share the property and assets and who will take what if your relationship ends.

There are 3 major types of property you should think about.

1. Property you or your partner owned before your relationship.
2. Gifts or property you inherited after you began your relationship.
3. Property that was bought during the relationship. There are a few types of this property.
 - Things one of you buys just for yourself.
 - Things you buy together that you own equally (50-50).
 - Things you buy together, but you think who owns it should be based on how much you each put into it. For example, if you buy something for \$100 and you pay \$75 and your partner pays \$25, then you own 75% and your partner owns 25%.
 - Things bought by only one of you, but the other later contributed to it. For example, if your partner bought a house, but you agree to put in time or labor to fix it up. You should decide whether your partner will continue to own the house by him or herself or whether you will build “sweat equity” in the house with your labor. “Sweat equity” means you gain an ownership interest with work instead of money.

Bank Accounts

Decide if you and your partner want to keep separate bank accounts, or pool all the money into one account. Keep in mind that if you share a bank account, either one of you could take out all of the money without permission from the other.



If you do decide to share a bank account, decide how the money in the account should be divided between you if the relationship ends.

Think about

- What share of the money will each of you take?
- Did one of you put in a large amount at the beginning that should be paid back before the rest is divided?

Debt

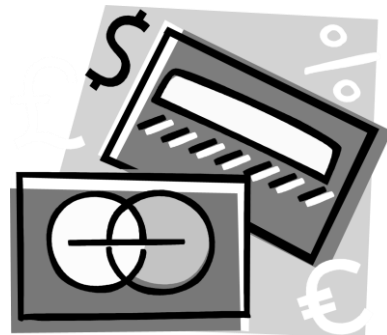
You and your partner should also discuss how you want debts to be handled. There are a few types of debts you should consider

1. Debts you or your partner had before you began your relationship. These could be school loans, credit card bills, child support payments, etc.
2. Debts you or your partner got individually during your relationship.
3. Debts you got together during your relationship.

Use your agreement to say who is responsible for paying how much on what debts if your relationship ends.

Credit Cards

You can use your agreement to decide if you will share credit cards or only have them in your own names, or some combination. Remember, if you and your partner are both listed on the card, you are both responsible for all of the charges on that card. This means if your partner charges a large expense on a card, the credit card company can hold you responsible even if you didn't know about or okay the purchase. Decide what will happen to these cards if your relationship ends and who will be responsible for paying what credit card bills.



Other Issues

You put other things into your cohabitation agreement, like custody and parenting time for children and some important end of life decisions. **But**, there can be problems with enforcing these parts, so if you want to put them in, talk to a lawyer.

Can we change our Cohabitation Agreement?

Yes. If the two of you decide that you want to change something, you can. You both have to agree to the changes you want to make. The changes have to be in writing and you both need to sign. If you only want to change part of your agreement and leave the rest the same, you should say so in your new agreement. Clearly say what you are changing and that the other parts of the original cohabitation agreement will stay the same.

What happens to our cohabitation agreement if one of us dies?

When a person dies, the property and money they leave behind is called an "estate." When a married person dies without a will, usually the estate goes to the surviving spouse. This is not true for unmarried couples. Unless you name your partner in your will, they will not get any of your estate when you die. Instead your estate will go to your closest family members or the state if you have no family.

An unmarried partner is not counted as family. A cohabitation agreement **changes** what is included in your estate. But only putting your partner in your will gives him or her **rights** to the things you want to leave.

For example, you have deposited your income over the years into a bank account that is only in your name, when you die there is \$10,000 in your account. If you do not have a will and there is no cohabitation agreement, all of that money goes into your estate and your relatives will inherit it even though you lived with your partner for 20 years.

But, if your cohabitation agreement says you and your partner share your income equally then he or she has a right to half of whatever is in your account when your relationship ends. So your partner has a right to \$5,000 of the money in the account. The other \$5,000 will go into your estate.

If you also have a will leaving the money in your bank account to your partner, then your partner would also get the \$5,000 in your estate.



Cohabitation Agreement vs. wills

A cohabitation agreement can give you or your partner some protection if your relationship ends with one of your deaths. However, because you are writing the agreement with the understanding that it could be enforced at a break up or at either of your deaths, you will not make the same decisions you would with a will. A cohabitation agreement splits what you have between you and your partner. A will gives you the option of leaving everything you have to your partner if you chose. A will is still the best way to provide for your partner after you die.

Providing for each other in your wills or with cohabitation agreement is particularly important if you are living in a house that is owned solely by only one of you or either you or your partner has forfeited a career to raise children or care for the home. Unless your partner has some right to the house owned by you, by either will or cohabitation agreement, your partner could be forced to leave after you die, even if he or she has lived there for many years.

For more information about wills and whether it would be a good idea to have one, see our fact sheet [Common Questions about Wills](#).

How can I enforce my cohabitation agreement?

Cohabitation agreements can only be enforced by a court after your relationship has ended. If you and your partner break up and your partner doesn't want to follow your agreement or there is a house or other real property that needs to be divided, you will need to go to court to enforce your agreement. You will file a claim telling the court about your agreement and how you want it enforced. If there is a lot of stuff or money involved, it is a good idea to get help from an attorney.

If your relationship ends with your partner's death, you will need to contact the executor of his or her estate and show them your cohabitation agreement. If your partner's estate ends up in probate, you will need to show the court your agreement. It is a good idea to get help from a lawyer during this process.

What if we have children together?

If there are children involved, talk to a lawyer.

Custody can't be enforced by a cohabitation agreement. Issues around custody and or visitation have to be done in family court.

When married couples split up, the judge that orders the divorce or separation makes decisions about property and custody of the children. When you separate as an unmarried couple, you might have to file a separate case in family court about custody.



What happens to our agreement if my partner and I get married?

If you and your partner get married, your cohabitation agreement no longer controls the financial things in your relationship. Instead, the rules that apply to all married couples will apply to you. Your cohabitation agreement could still be used to divide property you and your partner had before you got married.

See our fact sheet [Marriage and Debts in Minnesota](#).

Find more fact sheets at www.lawhelpmn.org/LASMfactsheets

Find your local legal aid office at www.lawhelpmn.org/resource/legal-aid-offices

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