FAMILY LAW

Cohabitation

What is cohabitation and how are couples protected in cohabitation? Find the answers to these questions and more by reading this QuickLaw guide.

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For all your cohabitation answers, follow our guide below:

1. What is cohabitation?
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1. What is cohabitation?

- Cohabitation refers to when an unmarried couple lives together in a long-term relationship that resembles a marriage.
- Seeing as the couple is not married, cohabitation is not regulated by law and does not receive the same protection as a marriage.
- There is no common law marriage in South Africa and the duration that couples spend living together does not mean that a marriage came into existence.

2. How are couples protected in cohabitation?

- In order to protect the couple in cohabitation, their rights and obligations can be protected by way of entering into a cohabitation agreement. This agreement regulates the relationship during its existence and after it has come to an end.

- A cohabitation agreement can be entered into verbally or in writing. It is recommended that such an agreement be concluded in writing and signed.
- The agreement can be concluded at any time during the relationship.

3. What does a cohabitation agreement contain?

- A cohabitation agreement should clearly set out the rights and obligations of the couple and include the following:
    - that the agreement does not constitute a marriage;
    - aspects regarding any joint property owned by the couple, such as a house. If a couple is buying or renting a house together, it is best to register or lease the house in both names. Alternatively, the cohabitation agreement can include arrangements regarding the house in the event of the relationship coming to an end (other than by death);
    - regulation of living expenses and which person will be responsible for what expenses;
    - provisions to establish what property and liabilities will be kept separate;
    - aspects regarding life insurance and pension funds;
    - maintenance, if any; and
    - duration and end of the agreement.
- The cohabitation agreement will only be enforceable between the couple to the agreement and not enforceable against third persons.
- A cohabitation agreement must not contain provisions that are immoral or illegal.
- Where a dispute arises regarding the application and interpretation of the agreement, a court may be approached for assistance.

4. What happens if the relationship ends with no cohabitation agreement?

- If there is no cohabitation agreement at the end of a relationship, a person is only entitled to retain the property which s/he has purchased and owns.
- The couple would be entitled to share in the property proportionately in terms of the contribution which they have made to the relationship. Each person will need to prove what property they have acquired together in order to get back what they are entitled to.
- It is always a good idea to keep proof of payments in the form of receipts and invoices as they may come in handy at the end of the relationship.

- In some instances, it is possible for the couple to share the property (in a similar manner as if they were married) if it can be proved that a universal partnership existed between them. The existence of a universal partnership can only be proved if the following requirements have been met:
    - the aim of the partnership must be to make a profit;
    - both parties must contribute to the partnership;
    - the partnership must operate for the benefit of both parties; and
    - the contract between the parties must be legitimate.
- It can be difficult to prove the existence of a universal partnership due to the strict requirements that must be met.
- If a dispute arises, a court may be approached for assistance.

5. Will a person inherit automatically if the other person in the relationship dies?

- If a couple was married, the surviving spouse would be entitled to inherit under the laws of intestate succession if his/her spouse dies without leaving a Will.
- Unfortunately, the same protection is not given to a couple in cohabitation. This means that if a person in the relationship wants the other person to inherit from his/her estate, it must be specifically stated in a valid Will.
- The cohabitation agreement cannot be used and any term in the cohabitation agreement that stipulates inheritance or maintenance after the death of one of the persons in the relationship will be invalid.

6. How can LegalWise assist you?

If you are a LegalWise Member and require more information or advice please contact your nearest LegalWise Branch, call, e-mail or WhatsApp us. For more information about our membership options visit our legal services page or visit our join now page.

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