



HARRIS LAW & CO.

Protecting Families & Businesses Through All of Life's Journeys

COHABITATION AGREEMENTS PROTECTING BOTH PARTNERS

You and your significant other may be moving in together and busy unpacking. Maybe you've been living together for a while and everything is peas and carrots. We all know things may not always go the way we hope. So, how do you protect yourselves and each other if things go awry?

If you've been living together or "cohabitating," you do not have the same rights as a married couple. Marriage is a state sponsored contract with rights and procedures outlined in law. But what about couples who live together and the only thing they do not have is the marriage certificate? In some states, this is historically known as "common law marriage." Common law marriages are not recognized in South Dakota. In fact, only 10 states allow common law marriages, and the trend is to abolish this old law. So, now what?

It is time for a Co-Habitation Agreement. Sound romantic? It should. Do you want your partner feuding with your family to remain in the home if you pass away? What about your personal property—is that your family's or your significant other's? What happens if it doesn't work out and someone moves out? How are you going to divide a life you built together without a roadmap?

Think of a cohabitation agreement like a prenuptial agreement. Both agreements outline expectations and rights before or during a relationship. The agreements can apply to shared property and assets or shared liabilities and bills. As South Dakota does not have laws outlining rights and responsibilities of cohabitants, it is especially important to ensure you have created your own agreement.



Consider the following when designing your Co-Habitation Agreement:

Household Expenses and Property:

How are you dividing the work in the household and the expenses to live there? If one person's name is on the home, but both parties contribute to it (mortgage, improvements, cleaning, etc.), how do you divide those contributions? Do you combine your money into a joint account? Do you each contribute to the home? Are contributions financial or intangible? Determine what is important for each party if you have to split joint efforts. Defining each partner's responsibility helps determine how to divide roles and contributions. The conversations that lead to these decisions can be empowering.

Absent any agreement, the court process for property division is tedious. The process includes:

1. Valuing all assets
2. Determining the source of each asset

Did you Know?

- Did you know unmarried couples don't inherit each other's estates if they die?
- Did you know if you're living together and paying the mortgage equally, but not on the mortgage and your partner dies, you may lose your home?
- A trust or a will with the right attorney can direct your wishes, regardless of marital status.



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**Rebekkah J. Mouw
is a skilled advocate
on our Family Law
Team.**

Our Passion Shows!



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serve our
community by
referring us to your
friends & family.**

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opportunities.**

3. Analyzing roles in the household
4. Determining any agreements between the parties
5. Analyzing income and spending
6. Producing detailed testimony to support each position

This process leaves room for error and allows the Court to make the decisions—not you. It is also a great way to spend thousands of dollars.

Children:

This is an area where there is a big difference between a cohabitation case and a divorce case. Divorce cases combine both custody and property into a single case. When the parties are not married, custody and property division are separate cases, which leads to higher legal fees and less predictable outcomes. There is simply not a roadmap for this under South Dakota law. Cohabiting parties may agree on custody in a Co-Habitation Agreement, but this agreement is not binding, and the Court still has the ability to determine what is in the best interest of the child. However, it can be persuasive to the Court in cases where there is no clear “winner.” Having an Agreement that discusses financial support and divides the assets already in place will help reduce the time, stress, and financial burden a split will have for both parties.

Business Interests:

If you and your partner run a business together, you need to ensure you have a well thought out Buy-Sell Agreement too. It is tricky enough running a business with family and those we love, but many businesses fail to survive a breakup between partners without a roadmap. This leaves both partners with a higher financial burden from the business and a less profitable exit.

The goal in a Co-Habitation Agreement is to protect both partners in the event it doesn’t work out. It is a simple goal, but there are many legal ramifications from the decisions you make. Having sound legal guidance through the process is vital to ensure you have an agreement that is legally enforceable and sets clear expectations of both partners. You can save time and money by starting these conversations with your partner now. You don’t have to agree on everything by the time you visit with the attorney, in fact, your attorney can help you through some of these difficult decisions by offering solutions that you are not aware exist.

The decision is yours. Co-Habitation Agreements may seem like a bad omen to a relationship, but thinking of it differently, we see it is a healthy start to a joint life that sets clear expectations and goals between partners leading to unity and peace of mind.

Have any questions about Co-Habitation Agreements? It is not too late, call us at 605-777-1772 and let our family law team help you design the right agreement for you and your partner.

**This article is for general informational purposes and is not intended to give legal advice. Please consult with an attorney about your situation.*