

# Living Together Contracts

## **Learn what a living together contract is and whether or not you need one.**

A contract is no more than an agreement to do (or not to do) something. Marriage is a contractual relationship, even though the "terms" of the contract are rarely stated explicitly or even known by the marrying couple. Saying "I do" commits a couple to a well-established set of state laws and rules governing, among other things, the couple's property rights if they split up or when one of them dies.

Unmarried couples, on the other hand, do not automatically enter into a contract when they start a relationship. If you want to legally establish how you will own property during your relationship, as well as what will happen if you separate or if one of you dies, you must write out your own rules. (Married couples do something similar when they create a premarital agreement. Your agreement will be legally called a "nonmarital agreement," but we prefer the term "living together contract.")

Some couples find it unromantic or depressing to even think about making a contract governing mundane details like money and property, particularly if doing so involves thinking about what might happen in the event of separation. But preparing a sound living together agreement can help you in a whole host of ways. Practically speaking, your agreement will help you avoid trouble when you mix your money and property, and it will make clear your intentions and expectations regarding property ownership, household expenses and the like. It can also greatly ease the division or distribution of property after a breakup or death. On a more personal note, the process of negotiating and drafting your agreement may well strengthen your abilities to communicate with and understand each other.

That said, here's an overview of the legal rules and practical concerns you should think about before drafting a contract of your own.

## **Legal Rules Governing Living Together Contracts**

For the most part, courts and judges -- not legislatures -- have made the legal rules governing living together contracts. The leading court case is the well-known *Marvin v. Marvin*, 557 P.2d 106, decided by the California Supreme Court in 1976. It involved the actor Lee Marvin and the woman he lived with, Michele Triola Marvin. (She used his last name even though they weren't married.) In its decision, the court announced what were to become the common legal principles governing the right of unmarried couples to make contracts. First, the court ruled that marital property laws do not apply to couples who are not legally married. Then, the court recognized that unmarried couples are here to stay. Finally, the court declared four contract principles:

- Unmarried couples may make written contracts.
- Unmarried couples may make oral contracts.

- If a couple hasn't made a written or oral contract, the court may examine the couple's actions to decide whether an "implied" contract exists.
- If a judge can't find an implied contract, she may presume that "the parties intend to deal fairly with each other" and find one partner indebted to the other by invoking well-established legal doctrines of equity and fairness.

Although Marvin directly applies only in California, other states have upheld the application of these principles to contracts made by unmarried partners -- both straight and gay. Depending on the state, however, a court may follow different legal rules. Almost all states now enforce contracts between unmarried partners, although in some states only written contracts will be enforced.

### Getting Help

If you're not sure whether living together contracts are valid in your state, you'll need to consult a lawyer or do some legal research of your own. Even if you know that you can make a legal agreement, there are some situations in which you should seek a lawyer's help.

Get legal advice before signing an agreement if it involves a lot of money or property -- or complicated estate planning. This is just common sense, particularly if one partner has substantially more assets than the other.

Also, you should get help if it might appear that one of you has much greater bargaining power than the other. A living together contract may not be enforced if a judge concludes that one person has taken unfair advantage of the other. For example, a court is unlikely to uphold a one-sided living together contract entered into between an experienced lawyer and an unsophisticated but wealthy 19-year-old who just moved to America and speaks little English, under which the immigrant agrees to support the lawyer.

### When You Need a Living Together Contract

Obviously, you don't need a contract if you are in a brief relationship. But in a long-term and serious partnership, whether you're basking in the glow of having just "joined forces" or you've been together 20 years, you should consider the legal consequences of dealing with money and property. If you are planning to mix assets or share expenses, you should most definitely put your agreement in writing, especially if a significant amount of money is involved. If you're both stone-broke, with no property and little prospect of getting any soon, you can still benefit by deciding how you will handle money and property if it ever arrives. Also, you can put more emphasis on the practical issues of day-to-day living together, such as how expenses will be paid.

### What to Include in a Living Together Contract

A living together contract can be comprehensive, covering every aspect of your relationship, or it can be specific, covering only one transaction (such as a new house purchase). These contracts need not be like the fine-print monsters pushed at you when you buy insurance or a car. You can, and should, design your contract to say exactly what you both want, in words you both understand. A simple, comprehensible and functional document using common English is much better than one loaded with "heretofores" and "pursuants."

If you want your living together contract to include personal details about your relationship, make two agreements. The first one should pertain only to property and finances. Then, if the worst ever happens and you find yourselves in court, the property and finance terms will be the only ones a judge sees. Write up a second agreement, if you wish, about who will do the dishes, who will walk the dog, how many overnight guests you'll allow and whose art goes in the living room. A court won't -- and shouldn't be asked to -- enforce this kind of agreement. In fact, if you do make just one agreement that includes personal as well as financial clauses, you run the risk that a court will be distracted by the personal clauses and will declare the entire contract illegal or frivolous, thus negating the more important financial clauses.

Here are the issues that couples most often include in a living together contract:

### **Property and Finances Clauses**

Your living together agreement should cover all of your property -- including the property you had before you began the relationship, as well as the property either or both of you accumulate during it.

**Property owned before living together.** You each probably had some property before you met. Making an agreement about this property may seem unnecessary, but it's not. Think about trying to sort things out ten years from now, when you've both been referring to everything around the house as "ours." You can agree to keep all of your previously owned property separate, or you might want to share some or all of it with each other. Do what suits you best.

**Property inherited or received by gift during the relationship.** Many people will want to keep separate the property they inherit or receive by gift. Others will want to "donate" the property to the relationship. Again, it's up to you. Remember that any property given to both of you is legally owned by both -- this includes gifts you receive at a commitment ceremony or anniversary party, even if given by a relative or friend of just one of you.

**Property bought during the relationship.** Many people make purchases item by item, understanding that whoever makes the purchase owns the property. Purchases can also be pooled. A consistent approach to property ownership may simplify things, but is required by neither law nor logic. Some items may be separately owned, some pooled 50-50, and some shared in proportion to how much money each contributed toward the purchase price or how much labor each put into upkeep.

## Expenses

Your agreement should cover how you want to handle expenses during your relationship. For example, how will you divide the day-to-day costs for food, utilities, laundry, housing and the like, especially if expenses increase or decrease? Here are a few suggestions about how to share expenses:

- **Share and share alike.** Many couples have only one checking account. They both deposit their paychecks into it and pay all household bills out of it. They figure it all evens out in the end.
- **Split 50-50.** Some couples prefer this method. When one partner buys something for the house or pays a bill, he writes his name on the receipt and throws it into a jar. Every few months, they empty out the receipt jar and total up how much each has spent. One then writes the other a check to even things up.
- **Each contributes in proportion to her income.** This works especially well for people with large income discrepancies.

## Separation or Death

It's wise to include at least brief provisions in your agreement stating what will happen if you split up or if one of you dies. You may simply want to say that if you separate, each of you will have the right to take immediate possession of your separate property and that all jointly owned property will be divided equally. If there is property that you own together -- but not in equal shares -- you'll want to specify a method for dividing it between you.

Though it may be difficult to think about it, it's especially important to consider what will happen if one of you dies. Without properly prepared documents, members of an unmarried couple have no right to inherit property from one another. You can use your living together agreement to specify how you want to provide for each other; it will serve as strong evidence of your intentions. Be aware, however, that writing out a plan in your agreement is not enough. You should also use a will, living trust or other estate planning documents to ensure that your plan is carried out as you wish. For more information about ways to leave your property at death, see the Wills and Estate Planning area of Nolo's website.

## Dispute Resolution

We recommend that every couple who prepares a living together contract include a method for resolving any disagreements that later arise out of it. Traditionally, if this type of dispute was severe, a couple had to go to court to resolve it, but there are better alternatives now. You may want to make mediation your first-choice method for resolving disputes, stating in your agreement that you will choose a third party to help you resolve any disagreements about your living together contract. If mediation is unsuccessful, you might allow either partner to submit the dispute to formal and binding arbitration. This should be enough to avoid the complications and expenses of a lawsuit.

## **What Happens to Your Living Together Agreement If You Get Married?**

Your living together contract will be enforceable after marriage only if it was created shortly before your marriage at a time when you both planned to marry. To be enforceable, prenuptial (or premarital) contracts must be made in contemplation of marriage. For more information, see the Prenuptial Agreements section of Nolo's website.

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