

Property Rights of Unmarried Couples FAQ

From property agreements to palimony -- property right information for unmarried couples.

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When is it important for an unmarried couple to make a written property agreement?

If you haven't been together long and don't own much, it's really not necessary to make a written agreement. But the longer you live together, the more important it is to prepare a written contract making it clear who owns what -- especially if you begin to accumulate a lot of property. And, if you buy a house together, it's a good idea to create a property agreement.

If you don't create a property agreement, you might face a serious (and potentially expensive) battle if you split up and can't agree on how to divide what you've acquired. And, when things are good, taking the time to draft a well-thought-out contract helps you clarify your intentions.

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What should a property agreement include?

You can tailor your property agreement to meet the needs of your relationship. The major areas of concern for most unmarried couples are:

- how property and assets are owned, and
- whether or not income and expenses are shared.

Some couples choose to keep all property owned -- a car, a house, furniture, and the like - - completely separate, while others choose to share some or all of their property by transferring part ownership to each other. You can also specify how you will own property that you acquire during your relationship. (If you decide not to prepare a comprehensive property agreement that covers this issue for all of your property, you can use a "joint purchase agreement" for major items as you buy them.)

Similarly, you may use your agreement to share or divide income and expenses in any number of ways. You can keep separate bank and checking accounts, credit cards, and insurance, or you can agree to handle some or all of these things jointly.

In your agreement, you may also want to decide in advance who gets what should you separate, or agree to a process for resolving any property disputes that arise if you part ways.

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My partner and I are buying a house together. How should we cover that in our property agreement?

It's particularly important to make a written property agreement if you buy a house together; the large financial and emotional commitments involved are good reasons to take extra care with your plans. Your contract should cover at least four major areas:

- **How much of the house does each of you own?** If it's not 50-50, is there a way for the person who owns less than half to get an increased share -- for example, by fixing up the house or making a larger share of the mortgage payment?
- **How is title (ownership) to be listed on the deed?** One choice is as "joint tenants with rights of survivorship," meaning that when one of you dies, the other automatically inherits the whole house. Another option is "tenants in common," meaning that, when one of you dies, that person's share of the house goes to whoever is named in a will or trust, or goes to blood relatives if the deceased partner left no estate plan.
- **What happens to the house if you break up?** Will one of you have the first right to stay in the house (perhaps to care for a young child) and buy the other out, or will the house be sold and the proceeds divided?
- **If one of you has a buyout right, how will the house be appraised and how long will the buyout take?** Most people agree to have the realtor that helped with the purchase appraise the house and then give the buying partner one to five years to pay off the other.

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My partner makes a lot more money than I do. Should our property agreement cover who is entitled to her income and the items we purchase with it?

Absolutely. Although each person starts out owning all of his or her job-related income, many states allow this to be changed by an oral contract or even by a contract implied from the circumstances of how you live. These types of contracts often lead to misunderstandings during a breakup. For example, if there's no written agreement stating whether income will be shared or kept separate, one partner might falsely claim the other promised to split income 50-50. Although this can be tough to prove in court, the very fact that a lawsuit can be brought creates a huge problem. For obvious reasons, it's an especially good idea to make a written agreement if a person with a big income is living with and supporting someone with little or no income.

Example: Jon and Rose plan to buy a fixer-upper house and move in together. Jon is a carpenter; Rose is a university professor who makes nearly twice as much as Jon. Jon and Rose plan to own their home equally, so they agree in writing as follows: Rose will pay two-thirds of the mortgage, and Jon will pay one-third. Rose and Jon will equally pay for the materials to fix up the house, and Jon will contribute all the labor. Rose and Jon also agree to equally own all the property, furniture, and fixtures they buy once they move in together.

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What is palimony? And should we make any agreements about it?

Palimony is a phrase coined by journalists -- not a legal concept -- to describe the division of property or alimony-like support paid to one partner in an unmarried couple by the other after a breakup. Members of unmarried couples are not legally entitled to such payments unless they've made an agreement about it.

In the famous case of *Marvin v. Marvin*, the California Supreme Court ruled that a person who lived with a partner and later sued for support could argue that an implied contract existed between the partners. To avoid a battle over palimony, it's wise to create a written agreement that speaks to whether or not one partner will make payments to the other in case of a break-up.

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Am I liable for the debts of my partner?

Not unless you have specifically undertaken responsibility to pay a particular debt -- for example, you cosigned a promissory note or the debt is charged to a joint account. By contrast, married spouses are generally liable for all debts incurred during marriage, even those incurred by the other person. The one exception for unmarried couples applies if you have registered as domestic partners in a location where the domestic partner law

states that you agree to pay for each other's basic living expenses -- that is, food, shelter, and clothing.

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If one of us dies, how much property will the survivor inherit?

Usually nothing, unless the deceased partner made a will or used another estate planning device, such as a living trust or joint tenancy agreement. In a few states, same-sex partners who are registered as domestic partners or have entered into a civil union relationship may automatically inherit a portion of a deceased partner's property, but these laws are by no means the safest or easiest way to plan for inheritance. The bottom line is simple: To protect the person you live with, you should specifically leave property using a will, living trust, or other legal document.

Making a Property Agreement

For help making a property agreement, as well as answers to more questions like these, see Nolo's *Living Together: A Legal Guide for Unmarried Couples*, by attorneys Ralph Warner, Toni Ihara, and Frederick Hertz. The book includes various agreements as tear-out forms and on CD-ROM, and provides state-by-state charts of state laws for your reference.

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