



A guide to cohabitation & prenuptial agreements

Cohabitation or prenuptial agreements are designed to protect you should your situation change.

For life changing events

kiddrapinet
S O L I C I T O R S

A Guide to cohabitation & prenuptial agreements

Cohabitation or prenuptial agreements are designed to protect you should your situation change.

1. A cohabitation agreement
2. Matters relating to children
3. A prenuptial or civil partnership agreement

1. A cohabitation agreement

A cohabitation agreement (sometimes termed “no-nup”) is a legally binding agreement between two people who live together (cohabit) without getting married or entering a civil partnership agreement. It sets out how your finances (capital and income, assets and liabilities) are to be dealt with if you separate, and is an important means of safeguarding your financial position in case your relationship breaks down.

Although people often refer to cohabiting couples as common law spouses, the law in England & Wales does not recognise

common law husbands or common law wives. Cohabitees do not have the same legal obligations towards each other that marriage or civil partnership brings. If your relationship breaks down, the law may not automatically step in to protect your financial position, hence the need for a cohabitation agreement.

For example, imagine that you and your partner live together without being married or entering a civil partnership. Your partner owns the property you live in: they bought it many years ago in their name, and they pay the mortgage. You buy all the food and pay all the household bills, and the cost of this is about equal to your partner’s mortgage payments. In terms of outgoings, it is a 50/50 split.

If your relationship broke down and you separated, your partner would be entitled to keep the property, with the benefit of the mortgage payments they made. You would have little or no claim over it, even if your partner was only able to afford the mortgage because you paid for all the food and household bills.

If you had been married or in a civil partnership (with the same arrangements as to mortgage payments and other household expenditure), the court (depending on circumstances) would have wider powers to redistribute the equity in the family home between you and your partner.

A cohabitation agreement enables you to claim many of the safeguards available to spouses/civil partners. In this case, it could be drafted so as to entitle you to a share in the property, reflecting the financial contribution you made to household costs during the relationship.

2. Matters relating to children

As well as protecting your financial position, a cohabitation agreement can address matters relating to children, including financial provision for them.

If a couple is married or in a civil partnership when their child is born, both parents automatically have parental responsibility for the child. Both are responsible for the child's welfare and entitled to take key decisions about their upbringing, like where they live and which school they go to.

If you and your partner are unmarried when your child is born, the father only has parental responsibility if he is named on the child's birth certificate, or enters into a formal parental responsibility (PR) agreement with the mother (this requires registration) or if the court orders it. A cohabitation agreement can ensure that if your relationship breaks down, you and your partner share responsibility (including the financial cost) for your children.

A cohabitation agreement should be drafted by a solicitor. Each of you should take legal advice independently of the other, to ensure it is enforceable. You will each need to disclose full details of your financial circumstances, and your solicitor will help you to agree terms with your partner. You can make a cohabitation agreement even if you have been living together for some time – it's not a case of it being too late.

3. A prenuptial or civil partnership agreement

A prenuptial or pre-civil partnership agreement (pre-nup), also a postnuptial/civil partnership agreement (post-nup) is an agreement reached between two people before they get married or enter a civil partnership, setting out how they would like their finances to be dealt with if the relationship breaks down. When the court in England & Wales makes a financial

order on divorce or dissolution of civil partnership, it has a wide discretion as to the terms of the order. A pre-nup or pre-civil partnership agreement sets out the terms you would like the court to make.

It may seem risky to suggest a pre or post-nup agreement. There is surely no better way to drain the romance out of your relationship than by contemplating its failure. However, if any of the following apply to you, it is certainly worth considering:

You, or your relatives, may wish to protect family wealth from the claims of a spouse or civil partner on relationship breakdown. A pre or post-nup is a way of ring-fencing assets handed down by gift or inheritance and intended for future generations: descendants rather than those who marry into the family.

You may have acquired assets before you met your spouse or civil partner – the fruits of a successful business or career which you worked hard for and regard as your own, to be kept separate from assets acquired jointly during your relationship.

There may be great inequality of wealth between you. The court in England & Wales can, at its discretion and depending on all the circumstances of the case, put everything into the "pot" and divide a couple's wealth equally between them. For this reason, the richer party may wish to ring-fence at least part of their fortune.

If you lead an international lifestyle, foreign courts could have jurisdiction over your divorce and financial settlement. You might want a pre-nup to secure the English court's jurisdiction. This depends on which jurisdiction is potentially the most favourable for you. You may need to take advice from both English and foreign lawyers.

You may have a child from a previous relationship and want to protect funds for them. Arguably assets generated during the previous relationship should be available for them, and not swept from under their feet by a later spouse or civil partner.

If you have been through an acrimonious divorce yourself, or witnessed family or close friends go through this, you may prefer to agree settlement terms in advance, when on good terms and capable of calm discussion.

You may also prefer the autonomy of drawing up your own settlement, rather than risking a legal battle resulting in a settlement imposed by the court. In addition, a pre-nup can include a confidentiality clause, whereas financial proceedings in court may be open to media reporting and unwelcome publicity.

As the law stands, a pre or post-nup is not automatically enforceable in England & Wales. In certain circumstances, and especially if it appears unfair to one party, the court can override a pre-nup. To minimise the risk of this, each of you should take legal advice independently of the other. The agreement should be drafted by a solicitor. You should disclose full details of your financial circumstances, and the pre-nup should include provision for the terms to be reviewed if your circumstances change significantly. You should both sign the agreement well before your wedding or civil partnership, so neither of you can claim to have signed under duress. If there is insufficient time before the wedding, you can enter a post-nuptial agreement instead.

For further advice
or to book a
consultation, please
call or email today.

webenquiries@kidrapinet.co.uk

LONDON 020 7265 0770

SLOUGH 01753 532541

MAIDENHEAD 01628 621301

HIGH WYCOMBE 01494 535321

FARNHAM 01252 713242

AYLESBURY 01296 432541

These materials and content have been prepared for the benefit of their viewers/readers. They are intended for marketing purposes only and are of a general nature and do not constitute legal advice applicable to any particular facts or circumstances. Kidd Rapinet LLP and/or the author(s) accept no duty of care, responsibility or liability for any loss or damage which you or any third party may suffer as a result of any reliance or use by you or they of these marketing materials and content, except to the extent it is not legally possible to exclude such liability. If you require legal advice on your own situation, please contact us so we can discuss how we may assist.