

The Out/Law Series of Legal Guides

Living Together

Some Questions to Consider

barbara findlay QC

If you are going to live together, married or not, it is a very good idea to write a 'cohabitation agreement'. These agreements are also called 'property agreements' or 'pre-nuptial agreements'.

Why make an agreement?

1. Because it is easier to talk about things like money, property, and what will happen if you break up now, while you are still happy and optimistic.
2. Because you clarify with each other assumptions and expectations about financial and other issues.
3. Because if you end up in a battle with your ex at the end of a long relationship, the legal fees are very high.
4. Because the law is changing quickly and if you do not have an agreement the law may supply one with no input from you.
5. For the same reason you have insurance. The fact that you have a cohabitation agreement does not make it more likely that you will break up, any more than having fire insurance makes it more likely that you will have a fire.
6. Because for most people, the decision to live together has greater financial consequences in the short, medium, and long term than any other decision you make in your life.

Go over the questions in this booklet together. Write down your answers.

Is there a standard way of doing things?

No. there are almost as many different ways of organising financial and other aspects of a relationship as there are lesbian, gay, or transgendered couples.

What is important is that you and your partner agree about how the major aspects of your relationship work and what will happen if you break up.

What Do You Own?

Make a complete list of everything that either of you owns, or that both of you own together.

Remember to include:

- Real estate
- Investments
- RRSPs
- Insurance
- Pensions
- Vehicles
- Art
- Sports equipment
- Furnishings
- Children's things

Bank accounts and Investments

1. Are your bank account(s)
 - In separate names?
 - Joint between you?
 - Some of each?
2. Do your bank accounts have different purposes - e.g. one for household expenses, one for savings?

3. Do you have RRSP's? Who is in the beneficiary?

NOTE: There is a big tax advantage in naming your partner, instead of anyone else, as beneficiary of your RRSP because your partner (but no one else) is permitted to 'roll over' your RRSP into her/his RRSP without paying taxes when you die.

4. Do you have investments? Whose name are they in?

Who Owns What?

1. Of the things that the two of you own,
 - Are there things that each of you owns and things that you own together?
 - Do you own everything together?
 - Do you own everything separately?
2. Is your answer different with respect to things that you owned before you got together than it is with respect to things you acquired after you got together?

What Do You Owe?

Make a complete list of all of the debts that you have, either individually or together, including the amount and the purpose of the debt.

Who Pays What?

1. Of the debts that either or both of you have, who is paying them? (i.e. whose money)
 - All are paid by one of us
 - Each pays the ones she or he incurred
 - All are paid jointly
 - Different ways for different debts
2. If you own real estate, who contributed what to the down payment?

3. In whose name is each debt? Don't forget to include:

- Mortgage
- RRSP loans
- Utilities
- Taxes
- Credit cards
- Personal loans
- Line of credit
- Loans one of you has made to the other

Touchy Issues

This is a good time to make agreements about non-financial issues. What is your emotional 'bottom line'?

Is there anything that your partner could do that would be the end of the relationship, no questions asked, for you? For example:

- If your partner hit you
- If your partner had an affair, or broke your agreement about sex?
- If your partner started drinking or doing drugs?
- If your partner mistreated your child, or your parents?
- Or???

Children

1. Do you have children?
2. Who is the Bio-parent?
3. Did your child come to you during this relationship, or did one of the two of you have a child before you got together?
4. Are there any custody/access agreements in the place with respect to the child between the bio-parent and an ex?
5. Has the one of you who is not the Bio-parent adopted the child?
6. Do you want to make any agreements about the care of the child(ren) if you separate, for example:

- agreeing that you will continue to co-parent the child(ren) even if you separate, or that one of the two of you will parent the child(ren)
- agreeing that if you separate neither of you will move more than 5 km from the other without mutual agreement
- agreeing that if you separate the child will, as far as possible, spend equal time with each of you
- agreeing that each of you will be the primary parent of one of your (two or more) children

7. Who would you want to be the guardian of your children if something happened to both of you?

Parents

For older queers, the issue may not be who is going to care for the children, but what arrangements you are now, or may in the future be, willing to make with respect to elderly parents.

Talk about what you would do if parents of one of you needed more care than they now require.

Spousal and Child Support: How Will the Family be Supported if You Separate?

One of the biggest potential consequences of separation is an obligation to pay 'spousal support'. In the absence of an agreement, the law applies 'spousal support advisory guidelines' which calculates the range of both the amount of support to be paid, and the length of time during which it will be paid, on the basis of a formula involving the difference between your incomes, and the length of the relationship.

Do you want to be responsible for each other during the relationship or if you separate? If you do not, what do you think should happen if one of you becomes disabled and is disabled when you separate?

If you do not want to be responsible for each other, the alternative is to ensure that each of you has and keeps disability insurance.

1. Does each of you currently have disability insurance through your employment?
2. If so, do you want to agree with each other that you will not leave that employment except for other employment which also has disability insurance?
3. If not, should the uninsured partner(s) acquire disability insurance privately?
4. What is your expectation about the standard of living that each of you would have if the relationship ended?
5. Does your answer to #4 change if you have a child(ren), whether during a child's preschool years or otherwise?
6. Whatever agreement you and your partner make about spousal support, do you want it to be binding on your estate if you die before the agreement has been fulfilled?
7. Do you want to agree that each of you will leave a certain percentage of what she owns to the other when she dies? If so, what percentage?

Support for children is calculated according to federal 'child support guidelines', under which a parent who does not spend more than 40% of the time with a child must pay to the other parent an amount which is ascertained on the basis of her/his income. A paying parent pays that amount, plus a proportionate share of 'extraordinary expenses' such as daycare.

1. Do you agree that you will follow the federal child support guidelines to determine who pays whom child support and in what amount?

2. Are there any agreements you want to make now about the standard of living your child(ren) will enjoy, such as
- enrolment in Montessori school
 - one parent will stay home till a child is in kindergarten and then return to work
 - public schooling
 - extracurricular activities such as dance or swimming lessons, or sports activities

What Next?

When you have decided what you want the answers to these questions to be, you are ready to talk to a lawyer. She or he can put your answers into a legal agreement. It is worth hiring a lawyer for this purpose, because judges have discretion to change your agreement if they think it is unfair.

A lawyer can write your agreement to minimize the chance that will happen. The lawyer will then recommend that you each have ‘independent legal advice’ from a different lawyer, so that there is no question that each of you has been fully advised of your rights and responsibilities if you have an agreement, and if you do not. Though this seems like overkill, it operates as insurance that neither of you will be able to argue the agreement should be overturned because there is an aspect you don’t understand.

The lawyer will also advise you whether you need other documents, such as a Will or Representation Agreement, to ensure your decisions are carried out.

You may find, after you have finished thinking about the issues in this pamphlet that you have more questions than answers! That’s fine. Take the questions to a lawyer who will explain how the law operates with respect to each of the questions in this booklet: in other words, what will probably happen if you break up and do *not* have an agreement in place.

Some Sample Clauses

Some of the types of agreements other couples have made:

About things from before the relationship

Each of us owns what we brought into the relationship, and is responsible individually for the debts we had before we got together.

-or-

We have pooled everything we owned before we got together, and we are both paying off jointly the debts either of us had before we got together.

-or-

We have pooled all the assets and debts we had before we got together except (eg: except our RRSPs).

About things during the relationship

We agree to pool our income.

-or-

We agree to keep our incomes separate, and divide the following household expenses equally: (list)

-or-

We agree to keep our incomes separate, and divide the following household expenses in proportion to our respective incomes: (list)

Who Owns What During The Relationship?

We agree while we are together, that the person who buys something is the person who owns it.

-or-

We agree that while we are together, we own everything jointly, no matter who bought it.

-or-

We agree that each of us owns what she brought into the relationship; what we buy after that belongs to us jointly no matter who paid for it.

-or-

We agree that things purchased from the joint account belong to us jointly; things purchased from a separate account belong to the person who owned the account.

Household Management Questions

1. We agree not to spend more than \$x of common funds without talking to the other first.
2. We agree to save \$x per month.
3. We agree to support each other if one of us gets sick, is out of work, or is in school.
4. We agree to go to a counselor if one of us suggests it.

C. Separation

Property

Each of us will take the things which belong to us, and divide the balance equally.

-or-

We will divide everything either of us owns, 50/50.

-or-

Each of us will take what we brought into the relationship less the debts we brought in; and the rest is divided 50/50.

-or-

Everything will be divided 50/50 except (consider inheritances, lottery winnings, damage settlements, other windfalls).

The information in this booklet is current to January 2010

This Out/Law Legal Guide is for information only. The law may have changed since its publication date. It is not legal advice. For legal advice about your own situation you should consult a lawyer.

Feel free to reproduce this booklet, provided that you distribute it without charge and include this information block.

Published by
The Law Office of barbara findlay Q.C.
635-1033 Davie St.
Vancouver BC V6E 1M7
604 251-4356
www.barbarafindlay.com

© barbara findlay Q.C. 2010

