

UNMARRIED COUPLES SHOULD CONSIDER LIVING-TOGETHER DOCUMENTS

Many unmarried couples living together should have several written legal documents to serve as a proxy in place of a marriage contract and to help minimize potential financial disputes or complications in the event of a breakup or death, say CERTIFIED FINANCIAL PLANNER™ professionals.

Unmarried couples face many of the same financial issues as married couples but without benefit of marital laws: property rights, inheritances, employee benefits, and division of income and debts, for example. Unmarried couples should consider signing these legal documents when one or both bring substantial assets or debts to the relationship, they plan to stay together a long time, children are involved, or they plan to buy a home or move into one of their homes.

The first key document is a non-marital agreement, commonly called a “living together” or “domestic partner” agreement. This agreement is similar to a prenuptial agreement that a couple with accumulated assets might sign before they marry.

The agreement can be as specific or as broad as you wish to make it. Typically, the agreement will spell out how assets and income will be divvied up during a relationship, or after a relationship should it end. For example, it might spell out what portion each will contribute to the monthly bills. Will paychecks be pooled or kept separate? Will assets each person brings to the relationship be pooled or kept separate? What about assets inherited by one person during the relationship? Will they share employee benefits if the employer allows it? Will ownership of property bought during the relationship be based on who actually buys the property, kept proportional to the income each party earns, or split down the middle? How will existing or future debts be handled (it’s often best to avoid jointly titled credit cards)? How will property be divided at separation or death?

A living-together agreement is especially important when the purchase of a major asset is involved, such as a home. How will ownership be titled? Who pays what portion of the down payment and monthly mortgage, and how will any gains from the sale of the house be split up?

The agreement also might spell out a method for resolving future financial disagreements, such as using third-party mediation before resorting to the courts. Some agreements even go so far as to delineate who will cook and wash dishes and take out the trash, though some legal experts recommend that a separate agreement might be drafted for nonfinancial issues.

While there is little in the way of state statutes, most courts recognize living-together agreements—even oral agreements in some cases. But interpretations vary, so you'll want to hire an attorney (perhaps one for each party) to draft the agreement based on your specific needs and local court rulings.

A living-together agreement is only a start, however. Unmarried couples also should have a will, living will, and powers of attorney—legal documents even married couples should have. A power of attorney allows the partner to step in financially should the other become incapacitated. You can rescind such a power as long as you're mentally competent, so don't feel stuck with it.

A living will spells out what life-sustaining medical treatment you wish or don't wish should you become incapacitated, and the medical power of attorney grants your partner or other appointed agent such as a relative the legal authority to make medical decisions on your behalf, usually based on what you spell out in your living will. While married couples should have such documents, they are especially important to unmarried couples because relatives would otherwise likely supercede such decisions.

The same goes for a will. While married couples should have wills, state statute will typically—though not always—distribute property to the surviving spouse where there is no will. For an unmarried couple without a will, however, it's unlikely property or custody of a child will go to the surviving partner.

All these agreements may sound unromantic, but many relationships, unmarried ones as well as married ones, can end in bitter feuds. Written agreements not only can minimize such feuds, they can actually promote a healthier relationship by focusing attention on financial issues central to all relationships.