Secure Your Love: The Importance of Drafting a Cohabitation Agreement for Unmarried Couples

Marriage is one of the oldest institutions, but with an ever-evolving society, many people these days prefer not to be “tied down”. Instead of getting married, people simply move in with each other, build a life together, have children, buy property, and do business together. This arrangement is known as cohabitation.

There’s a perception amongst the public that if you live together for a certain period, you are regarded as being married and often refer to it as a “common law marriage”. This is entirely incorrect, and currently, South African law does not recognize cohabitation partners in precisely the same way as partners in a marriage. This often leaves one or both cohabitation partners in a difficult position once the relationship ends, especially when one partner stays home and raises the children while the other is employed.

Debt incurred during the subsistence of the relationship is another significant and potentially life-changing problem that arises at the termination of the relationship. Cohabitation partners often incur debt in the name of only one of the partners, with an informal arrangement amongst each other as to who pays for the debt monthly. At the termination of the relationship, the partner in whose name the debt has been incurred is usually left to pay the debt on their own, and at that stage, they simply cannot afford to pay for it.

Fortunately, some remedies are available to cohabitation partners to prevent these problems. The first, and perhaps most important, is that a cohabitation agreement be concluded between the parties. Such an agreement should regulate, amongst others, their financial responsibilities, property ownership, and the children. It is vital that the cohabitation agreement not only regulates the relationship’s subsistence but also what each party’s rights and responsibilities would be when the relationship is terminated.

It bears mentioning that the law is continuously evolving to keep up with the moral standards of society. In December 2021, the Constitutional Court confirmed that life partners may now inherit from each other where one partner died

intestate (i.e., without a will). In the past, only married couples could inherit from their partner's intestate estate. You would, however, still need to prove that you were indeed in a permanent life partnership.

To avoid a magnitude of problems and costly litigation at the termination of the relationship, either by choice or by death, it is recommended that partners sign a well-drafted cohabitation agreement and a will.

You may download our free template of a cohabitation agreement here. If you require assistance with drafting a will, click here.

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