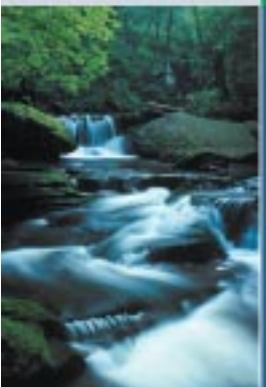


The “Living Together” Contract: A Guide for Same-Sex Couples



A contract is no more than an agreement to do (or not to do) something. It contains promises made by one person in exchange for another’s actions or promises. Marriage is a contractual relationship, even though the “terms” of the contract are rarely stated explicitly, or even known, by the marrying couple. Saying “I do” commits a couple to a well-established set of state laws and rules governing, among other things, the couple’s property rights.

► Myvesta is a nonprofit consumer education organization. We provide a wide range of educational materials to assist those in financial need. Visit us on the Web at Myvesta.org.



Unlike married couples, same-sex couples do not automatically agree to any contractual agreement when they start a relationship. You and your partner will have an obligation to a landlord or mortgage company if you rent or buy a place together, but that obligation would be no different if you were roommates. An emotional commitment, in and of itself, does not create a contractual relationship. If you make an agreement, however, or if you act as though you have an agreement, that agreement will often be considered an enforceable contract.

A typical unmarried couple may buy property, mix assets and invest together, without writing anything down.

A typical unmarried couple may buy property, mix assets and invest together, without writing anything down. If problems around money and property come up, they usually try to work out an understanding or reach a compromise. Sometimes they visit a therapist or ask their friends to help.

If they split up, they quietly divide their accumulations and go their separate ways, and are not required to go through a court process or follow the legal rules of marriage and divorce.

But some couples can't quietly divide the property and move apart. They fight big-time, in a courtroom, forcing the courts to deal with claims by unmarried partners. So here's some information on creating contracts to help you figure out your intentions, and lessen disagreements when things are going well.

And if you do happen to split up, having an agreement helps you avoid litigation (defined by Ambrose Bierce as "a machine which you go into as a pig and come out as a sausage"). The danger, trauma and expense of litigation are far less likely to be visited on those who have taken the time to define their understanding in an agreement.

What to Include in a Living Together Contract

A living together contract can be

comprehensive, covering every aspect of your relationship, or it can be specific, covering only your new house purchase. You can write your contract to say exactly what you both want, in words you both understand.

If you want your living together contract to include the day-to-day details of your relationship, make two agreements. The first one should pertain only to property and finances. Then, if one of you ever sues the other in court, the property and finance terms should be the only ones a judge ever sees. Write up a second agreement, if you wish, about who will do the dishes, who will walk the dog, how many overnight guests you'll allow and whose art goes in the living room. A court won't — and shouldn't be asked to — enforce this kind of agreement. If you make just one agreement, a court might get distracted by the personal clauses, declare the contract illegal or frivolous and refuse to enforce the more important financial clauses.

Property Owned Before Living Together

You each probably had some property before you met. Just because you move in together doesn't mean you can't continue to own your TV, oriental tapestry and floppy-eared cocker spaniel, while your lover holds onto his or her car and collected works of Virginia Woolf. Making an agreement about the property you bring into the relationship may seem unnecessary, but it's not. Think about trying to separate it all 10 years from now, when you've both been referring to everything around the house as "ours."

Property Inherited or Given During the Relationship

Many people will want to keep separate the property they inherit or receive by gift. Others will want to "donate" the property to the relationship. It's up to you. Remember though, any property given to both of you is legally owned by both — this includes gifts you receive at your union ceremony, even if given by a relative or friend of just one of you. If you plan to keep inherited or gift property

separate, don't forget to cover questions of use and control.

Property Bought During the Relationship

Many people make purchases item by item, understanding that whoever makes the purchase owns the property. Geoff buys the kitchen table and chairs, and Adam buys the lamp and stereo. If they split up, each keeps the property he bought.

Purchases also can be pooled. Adam and Geoff can jointly own everything bought during the relationship, and divide it all 50-50 if they separate. Adam and Geoff could also choose a combination of the two methods. Some items may be separately owned, some pooled 50-50, and some shared in proportion to how much money each contributed toward the purchase price or how much labor each put into its upkeep.

Expenses During the Relationship

How will you divide the day-to-day costs for food, utilities, laundry, housing and the like, especially if expenses go up or incomes go down?

- ▶ **Share and share alike.** You have one checking account. Both of you deposit your paychecks into it and pay all household bills out of it. Nothing changes, even if one of you returns to school or becomes unemployed. Incomes may shift and who earns more may vary year to year. It all evens out in the end, and whatever savings or debts accumulate are equally shared, regardless of who had the higher income.
- ▶ **Split 50-50.** When one of you buys something for the house or pays a bill, write your name on the receipt and throw it into a jar. Every few months, you empty out the receipt jar and total up how much each has spent. One of you then writes the other a check to even things up.
- ▶ **Each contributes in proportion to**

your income. This especially works well if you and your lover have great income discrepancies — for example, one of you earns \$75,000 a year and the other makes \$25,000. The person earning less might go crazy — broke, anxious and very dependent — if he or she tries to keep up. Adopt a plan to divide expenses 75-25.

Cooling-Off Clause

Consider including a clause to remind yourselves of your commitment should the stress of a moment threaten to drive you apart. Although it's not always enforceable in court, it's an excellent expression of intention. It can simply state that if one person wants to leave the relationship, he or she will take some time to cool off before grabbing the good wine glasses and heading for the hills.

Arbitration and Mediation Clause

If you split up and disagree over a provision in your contract, you have several ways to resolve the conflict. Traditionally, people go to court and let a judge decide, but there are alternatives to court, particularly mediation or arbitration. Both are cheaper, faster and usually less painful than litigation. You can include a mediation-arbitration clause in your contract and spell out exactly how you want to proceed.

Mediation is an informal process where you, your lover and the person or persons who will help you work together to reach a mutually satisfactory compromise. You then write out your agreement, agree to be bound by it and sign it. No decision is imposed on you. Many therapists do mediation work for couples splitting up, as do some attorneys.

Arbitration is quite a bit different. It, too, can be informal, but you and your lover each present your version of the dispute to a person or persons you've designated and empowered to make a decision. Unlike mediation, an arbitrated decision is made final by the arbitrator, not by the two of you. The parties

usually agree in advance to be bound by the arbitrator's decision. Otherwise, there's little point to the process. This means that if one of you sues in court, the court will merely enforce the arbitrator's decision. Business and labor disputes have been resolved through arbitration for years, partly because a dispute settled quickly is as important as who wins and who loses.

Here is a sample mediation-arbitration provision you can add to any agreement.

Meditation-Arbitration Clause

Any dispute arising out of this agreement shall be mediated by a third person mutually acceptable to both of us.

If we can't agree on a mediator, we will each appoint a representative and the two of them will choose the mediator. The mediator's role shall be to help us arrive at our solution, not to impose one on us. If good-faith efforts to arrive at our own solution with the help of a mediator prove to be fruitless after a minimum of four sessions, either may make a written request to the other that our dispute be arbitrated. This shall be done as follows.

1. Either of us may initiate arbitration by making a written demand for arbitration, defining the dispute and naming one arbitrator.
2. Within five days from receipt of the demand, the other shall name the second arbitrator.
3. The two named arbitrators shall, within 10 days, name a third arbitrator.
4. Within seven days, an arbitration meeting will be held. Neither of us may have a lawyer present, but we may consult with an attorney beforehand and we may present evidence and bring relevant witnesses.
5. The three arbitrators shall make their joint decision within 15 days after the

hearing. Their decision shall be in writing, will be binding upon us and will be enforceable by a local court.

6. If the person to whom the demand for arbitration is directed fails to respond within five days, the other must give an additional five days' written notice of his or her intent to proceed. If there is no response, the person initiating the arbitration may proceed with the arbitration before the arbitrator he or she has designated, and his/her award shall have the same force as if it had been settled by all three arbitrators.

About Myvesta...

Myvestasm is dedicated to helping people create healthy financial lives. The organization provides a wide range of materials to inspire and inform people so they can break down their barriers to financial and personal success. For more information visit Myvesta.org online.

Information Guarantee

The information in this publication is updated frequently. If you have not downloaded this publication directly from Myvesta.org, visit Myvesta.org to download a current copy of this publication.

We hope you find the information in this publication helpful. Please understand that Myvesta.org's publications are not intended to be legal, investment or financial planning advice. You should contact a lawyer, investment advisor, financial planner or other licensed professional in your state for specific advice.