



## What Should be in Your Pre-Nup or Cohabitation Agreement By Jodi Wyman

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Most couples understand what a pre-nuptial agreement is, and the benefits it can offer. Many couples also understand that they can get a cohabitation agreement in place when living in a common-law relationship, and it too can offer some benefits. It lets the couple opt out of various types of family law as they choose.

When couples decide they want an agreement like this however, they sometimes have no idea what should be in it.

The first thing to consider is that these types of agreements would apply if the couple separate, but also in the event one of them dies. When asking the “what if” questions, both scenarios have to be considered.

The first discussion is normally about assets. Generally, the law says that couples only have to share assets they acquired during the relationship, including the increase in value of pre-owned assets. The question for the couple is how much sharing they want to have

for assets they acquire during the relationship.

Do they want to share the increase in value of pre-owned assets as the law dictates? What about replacement assets, for example if the wife replaces her pre-owned car with a new car? Is that still exempt? What if she uses the money from the sale of her pre-owned car to buy a painting? Is the painting exempt from sharing if the couple separate?

The most extreme type of agreement would say that there will never be an accounting of assets. If the couple split up, or one dies, each spouse keeps any assets in their own name regardless of where the money to purchase it came from. If the couple choose to buy a car or cabin together, they would put both names on it. Otherwise, it belongs to the named owner.

Sometimes the spouses would prefer there be some asset sharing if one of them dies, such as letting the spouse keep the household contents. These

wishes can be in the agreement, but also their wills.

Couples need then to talk about the home they will live in. If it will be in the name of only one spouse, will the other have any claim to the home? What if they helped pay the mortgage or put money into renovations? What if the owner of the house dies? Can the owner of the house sell it without their partner’s consent? Couples also have to decide how they will share the bills for the house to make sure the outcome is not unfair.

Most importantly, if the non-owner partner invests a significant amount of money in the home, this must be addressed in the agreement.

The next big decision relates to spousal support. Will one spouse be in a position of financial dependency? Should the door be open for a claim for financial support after separation? After the death of the spouse with the higher income?

Sometimes couples would like an expiry date in the agreement. If the relationship lasts a long time, perhaps some spousal support or assets sharing is appropriate. Or, the agreement might expire after a child is born to them.

Finally, as any lawyer will tell the clients, these types of agreements cannot be considered legally binding unless there is full financial disclosure, and each spouse has independent legal advice.