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Your future. Handled with care.

The Cohab Workbook

By Harry. S Margolis, Esq.

You've found each other and are moving in together. That's great. We don't want to rain on anyone's parade, but we've seen the best laid plans go awry. Or, rather, we've more often seen lack of planning go awry.

As a second (third?, fourth?) relationship, you're bringing much more to the table than may have been the case had you met in your 20s: more assets, more family members such as children from a prior marriage (though perhaps fewer in-laws), and perhaps more vulnerability.

You have probably accumulated whatever financial assets you have through decades of hard work and savings. You may have done so with a spouse who is no longer here, but in some ways may have a claim on those resources. He or she may prefer that they ultimately pass to the children and grandchildren you had together, rather than to a new partner or to his or her children and grandchildren.

Those children may also get involved. They may be delighted that you have found someone new. (And secretly relieved that they don't have to worry about you as much?) But if you should fall ill, they may want to get involved in your care and may not see eye to eye with your new partner. Or they may have to step in suddenly if that partner either cannot or will not provide care himself or herself. Finally, they may be quite upset, rightly or wrongly, if your financial resources, not to mention your energy and health, go to caring for this new person (interloper?) in the family. It's important that they know what you want so that they don't act on what they think you should want.

Finally, while your heart may not be as vulnerable as it was when you were young, your health and finances are likely more vulnerable. All older people are more susceptible to illness and dementia every year. And if you have a financial reverse you will likely be less able to claw back from it in coming years.

On all the above, there's no right or wrong answer or one-size-fits-all solution. What's important is that the two of you go into this on the same page, with a full understanding of each other's expectations. Of course, those expectations may change over time or be altered by reality. You can always change your agreement.
Whatever you agree on, it's important to put it in writing. This serves several purposes, including:

1. It makes sure you're on the same page. Oral discussions can be vague. With no discussion, you have no idea if your expectations and those of your partner are the same or different.

2. It brings up new issues. The act of writing down agreements makes them more concrete and brings up issues you will not think of without taking this step.

3. It's an aid to memory. No one's memory is 100% accurate and you may be surprised by what you agreed to or thought years earlier.

4. It's a record for third parties. Your children and your partner's children are less likely to object to your arrangement if its written down. If it's not written down, they may imagine you have different expectations for your relationship than the reality.

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FAQs

Is the agreement legally enforceable?

Yes and no. If you both sign the agreement, it is a contract and is legally enforceable. But what does that mean? That if you go to court seeking an order that the terms of the agreement be followed or that you receive monetary compensation (money) because it hasn't been followed, you could win. But who really wants to go to court with the cost, stress, time and delay involved? No one. Of course, the threat that either party may go to court could be persuasive in convincing both partners to follow the terms of the agreement. But everyone's much better off if things never got that far and you see the agreement as a roadmap that you both (and potentially heirs or family members) will follow in total good faith.

What about domestic partnership?

While some cities and towns have recognized domestic partnership for purposes of employee benefits, such as health insurance coverage, it doesn't really exist as a legal matter in Massachusetts.

Should we use a lawyer (or lawyers for each of us)?

Perhaps, but start without a lawyer. If you run into difficulties or questions you can't answer without legal advice, then retain a lawyer. You'll only need separate lawyers if your estates are complicated or you definitely want your agreement to be legally enforceable as much as a guide to how you will live together.

Should we get married?

That's more a matter of what feels right to you rather than a legal question. Almost all the legal and financial rights that you're entitled to as a spouse can be provided by written agreement. There are two, however, that are only available if you're married. You may only receive Social Security spousal benefits if you're married. And only surviving spouses can rollover IRAs to their own account. These may or may not be relevant in your situation.

Do we need to change our estate planning documents?

Perhaps. If you want to leave your partner certain assets or rights, such as the right to stay in your home for a period of time after your death, then you should update your will or trust, or both. If you want to appoint each other on your durable powers of attorney and health care directives, then you'll have to update these as well.

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Can we change the agreement?

Yes. As long as you both agree, you can change this agreement anytime and as many times as you like.

Questions to Ask and Answer Before Moving in Together

You may choose to answer these questions together or answer them separately and then compare your responses.

Living Expenses

1. How will you share living expenses? This may include rent, mortgage payments, real estate taxes, utilities, food and entertainment.

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2. Who will pay for bigger-ticket items, such as vacations, especially if one member of the couple has more financial resources than the other?

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Break Up

3. What happens if you break up? This is especially important if you're living in a home owned by one member of the couple. In that case, how much time will the other have to find a new place to live?

4. If there's a discrepancy in financial resources, will the partner with more wealth assist the one who must move? If so, by how much?

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Illness

5. What happens if one of you becomes ill or suffers from dementia? Will the other care for him or her? For how long? Are there resources to hire caregivers? Do either or both of you have long-term care insurance?

6. Who will decide how those resources are spent?

7. Again, if the partner with fewer financial resources must move from the home owned by the other, will there be financial support from the better-off member of the pair?

8. If the owner of the home must move to an assisted living facility or nursing home, how much time will the other partner have to move?

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Death

9. What happens when one member of the couple dies, especially if he or she is the owner of the home or the surviving member cannot afford the home on his or her own? How long will the survivor be allowed to stay in the home?

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10. Will he or she be provided any financial support? If so, how much?

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11. Will this be incorporated into each partner's estate planning documents?

Other

12. Are there any other topics you should discuss or agree on?

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Vital Information

There are a number of pieces of vital information that partners should share and to which they should have easy access. This workbook is a good place to write these down so you both have them. Three's definitely other information that could be shared, but this seems like a bare minimum.

Spouse 1:

Children's names and contact information:

Name _____

Phone _____

Email _____

Name _____

Phone _____

Email _____

Name _____

Phone _____

Email _____

Name _____

Phone _____

Email _____

Name _____

Phone _____

Email _____

Health care agent:

Name _____

Phone _____

Email _____

Agent under durable power of attorney:

Name _____

Phone _____

Email _____

Spouse 2:

Children's names and contact information:

Name _____

Phone _____

Email _____

Name _____

Phone _____

Email _____

Name _____

Phone _____

Email _____

Name _____

Phone _____

Email _____

Name _____

Phone _____

Email _____

Health care agent:

Name _____

Phone _____

Email _____

Agent under durable power of attorney:

Name _____

Phone _____

Email _____

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Your future. Handled with care.

Lawyer:

Name _____

Phone _____

Email _____

Lawyer:

Name _____

Phone _____

Email _____

Accountant:

Name _____

Phone _____

Email _____

Accountant:

Name _____

Phone _____

Email _____

Financial Planner:

Name _____

Phone _____

Email _____

Financial Planner:

Name _____

Phone _____

Email _____

Doctor:

Name _____

Phone _____

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Doctor:

Name _____

Phone _____

Email _____

Other vital information:

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Other vital information:

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