JURK

Juridisk rådgivning for kvinner

Cohabitation

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FOREWORD

This brochure is published by Legal Advice for Women (JURK). JURK is an independent legal organization run by law students. JURK provides free legal assistance to women and to those who identify as women.

Reservation is made in case of changes in regulations after publication.

Our thanks for all the helpful input from colleagues in JURK.

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JURK (Legal Advice for Women) provides free legal assistance to women and to those who identify as women. Visit our website for more information about JURK: www.jurk.no

You can also call us on our phone number 22 84 29 50. Our address is Skippergata 23, 0154 Oslo.

You can send your case to us electronically on our website: www.jurk.no → “Send oss din sak!”

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1.0 INTRODUCTION

1.1 The aim of the brochure

An increasing amount of couples choose to live as cohabitants instead of getting married. Many people believe that the rules which apply to spouses also apply to cohabitants who have lived together for several years. This is not the case.

This brochure gives a brief overview of legal and practical issues that are relevant during the cohabitation and when the cohabitation ends.

2.0 RIGHTS DURING THE COHABITATION

2.1 Cohabitation agreement

No Cohabitation Act

There is no law that directly regulates the financial relationship between cohabitants in Norway. Therefore, it is important that the cohabitants enter into a cohabitation agreement.

What a cohabitation agreement should contain

JURK recommends that the cohabitation agreement is made in written form. A cohabitation agreement should clarify ownership, liability for debts, obligations towards each other and how the financial division is to take place if the cohabitation

ends. By entering into a cohabitation agreement, the cohabitants can prevent conflicts.

If one of the cohabitants is a stay-at-home parent, while the other is working, and they have mutual children, they should agree on if or how she or he will receive compensation for their efforts if the cohabitation ends. The same applies if one of the cohabitants pays the consumption expenditure while the other invests in lasting values.

You can contact JURK to receive our template for cohabitation agreement in English.

The legal effect of a cohabitation agreement

If the cohabitant have entered into a cohabitation agreement, this will be the basis for the financial division between them. You can read more about this under subsection 3.0.

2.2 Ownership and right of disposition

In principle, entering into a cohabitation does not change what each of the cohabitants owns. What each of the cohabitants owned before they moved in together, each of them still own. The same generally applies to what they buy, inherit or receive as a gift during the cohabitation.

However, the parties may become co-owners of objects during the cohabitation.

What the cohabitants own, can be of significance in several contexts. Firstly, the ownership is important in regards to the cohabitants' disposition of the assets. In addition, it can have an impact on the financial division when the cohabitation ends.

The ownership can be of particular importance to creditors. It is therefore important that the cohabitants register the ownership, to prevent creditors from seizing assets other than those that actually belong to the cohabitant that owes the money. For more information about how to secure your rights, see subsection 2.3.4.

Sole ownership

If the cohabitants have not made an agreement, everything a cohabitant brings into the cohabitation, and what she or he later buys, inherits or receives as a gift, will in principle be in this cohabitant's sole ownership. This means that she or he owns it alone.

Joint ownership

Joint ownership means that two or more people own something together with a share each.

A joint ownership between cohabitants can, for example, be established through a joint purchase, agreement or by the parties receiving an inheritance or gift together. Joint ownership can also occur by their contributions to the acquisition. If a joint ownership exist, the main rule is that the cohabitants each own an equal share, unless something else is agreed or stated in another way.

Right of disposition Sole ownership

A cohabitant is free to dispose over assets in her or his sole ownership. If one cohabitant owns the residence alone, she or he may, for example, ask the other cohabitant to move. A cohabitant is also free to mortgage and sell their own residence without consent from the other cohabitant.

Right of disposition Co-ownership

If an asset is co-owned, both cohabitants can use the asset. The cohabitants can agree on what they can do with the asset. If nothing is agreed upon, either explicitly or implicitly, the rules of Sameieloven (the Norwegian Joint Ownership Act) will apply.

Sameieloven states that the co-owned asset can be used for the purpose for which it was acquired, and in its usual way. Essential expences for necessary maintenance associated with the joint ownership are divided between the co-

owners according to the size of each cohabitant's share.

Sell or mortgage their share

The cohabitants can, at any time, sell or mortgage all, or part, of their share of the co-owned property, unless otherwise agreed or assumed.

This *may* not apply to assets used by both cohabitants, such as their residence. This is due to the nature of cohabitation. The cohabitants may agree that neither one of them can sell or mortgage the residence they co-own.

You should not sign anything you do not understand or agree on. If you have any questions regarding this you can contact JURK.

2.3 Determination of ownership

This subchapter explains different ways the cohabitants can determine ownership of assets.

2.3.1 Agreement

The cohabitants can agree on the ownership and ownership shares. If one of them owns a residence alone, the cohabitants can agree that the other cohabitant shall become a co-owner. Such an agreement may be made in written or

oral form. However, it is easier to prove the existence of written agreements. Whether cohabitants have an agreement regarding ownership must be assessed individually.
For more information about cohabitation agreements, see subsection 2.1.

It is the actual ownership that is decisive in determining whether a cohabitant is considered an owner, and not the formalities. The formalities are found in the Land Registry (grunnboken) or other registers. The fact that one is formally registered as an owner may be one of several factors in assessing whether cohabitants have an agreement on ownership, but it is not decisive in itself.

2.3.2 Acquisition

Unless the cohabitants have agreed on the ownership, the cohabitant(s) that *acquired* the asset is usually considered the owner.

There are several ways to acquire an asset. The most common ways are through purchase, gift or inheritance.

For example, if the cohabitants have bought a residence together, and both have paid for it, they have acquired this property together. The residence will usually be in their co-ownership.

If only one of the cohabitants has bought the residence, it will usually be considered to belong to this cohabitant alone, unless otherwise agreed.

2.3.3 Co-ownership as a result of efforts during the cohabitation

There are two conditions that must be met for a cohabitant to become a co-owner of an asset as a result of efforts during the cohabitation.

1. **Direct or indirect contributions**

The first condition is that the cohabitant must have made a direct or indirect contribution to the acquisition. Direct contributions can be made through owner's capital, work effort through self-building or by paying off loans, etc. Indirect contributions will typically be housework and coverage of living expenses.
As mentioned a cohabitant can become a co-owner through indirect contributions. The cohabitant must have enabled the other cohabitant's time and capital by covering more than their share of the living expenses or housework.

2. **Shared project**

The second condition is that the acquisition of the asset must have been a shared project between the cohabitants. This means that the asset must have been intended for a shared personal use, and

that there was a certain level of agreement when acquiring the asset.

It is *difficult* to become a co-owner of an asset that one cohabitant owned before the cohabitation. If the cohabitants have an agreement concerning the ownership, this will be decisive.

Disagreement concerning the ownership

If the cohabitants are unable to agree on the ownership, each cohabitant can take the case to court.

The court will assess each specific case individually, to determine whether a cohabitant has become a co-owner or not.

2.3.4 How to secure your share in a co-ownership

As previously mentioned, it is the actual ownership that is decisive between the cohabitants. However, the formalities are significant in relation to third-parties (most commonly creditors).

“Tinglysning”

A formality can be registering a share of a property (“tinglysning”) in The Land Registry (“grunnboken”). “Tinglysning” is a public registration of documents. **“**Tinglysning” of property is subject to the state's mapping system (Statens kartverk).

The effects of "tinglysning"

If one cohabitant registers her share, her share in the co-ownership will be secured against the other cohabitant's creditors. This also protects one cohabitant against the other cohabitant making dispositions beyond their share of ownership. This kind of disposition may be done through selling or mortgaging the other cohabitants share.

If you have more questions regarding "tinglysning" you can contact The Norwegian Mapping Authority (Kartverket).

2.4 The cohabitants' liability for debt

A cohabitant can only establish debt obligating themselves. This means that a cohabitant is only liable for the obligations she or he establishes for themselves. If a cohabitant is in a lot of debt, the creditor (the one you owe money to, usually the bank) cannot demand that the other cohabitant pays.

It is important to distinguish between external and internal debt liability. The external debt liability determines who the creditor can demand payment from. The internal debt liability determines how the cohabitants divide the payment among themselves.

External liability

If only one cohabitant is liable for the debt toward the creditor (externally), the creditor cannot demand that the other cohabitant pays.

Cohabitants can establish a loan together. In that case both cohabitants will be liable to the creditor (externally). The liability will often be solidary. This means that the creditor can demand that one of the cohabitants pays the entire amount.

Internal liability

Cohabitants can agree that the internal liability (between the cohabitants) shall be different from the external liability (towards the creditor). Such an agreement does not have to be in writing, but it is easier to prove that you have an agreement if it is in writing.

Each specific case must be assessed individually, to determine whether the cohabitants have an agreement that entails that both shall be liable internally for the debt.

The assessment of whether the cohabitants have an agreement emphasizes, among other things, the purpose of the loan, and whether the loan is for joint use. There must be specific indications that the cohabitants intended to commit to the loan together. It is not sufficient that the loan has been used in

	the best interest of the family or that both cohabitants have enjoyed the money.
Both cohabitants are liable externally, only one is liable internally	If *both* cohabitants are liable externally (towards the creditor), they can agree that only one of them shall be liable internally. In that case, the creditor can still demand that both pay.
One cohabitant is liable externally, both are liable internally	If only *one* of the cohabitants is liable ,towards the creditor/bank (externally) they can still agree that both shall be liable for this debt internally. The cohabitant who is liable towards the creditor (externally) can demand payment from the other cohabitant for their part. The , creditor can only demand payment from the person who is liable externally.
Claim for recourse (right of recovery)	If one of the cohabitants pays for debt that the other cohabitant was supposed to pay, she or he may have a claim for recourse (right of recovery). This means that the cohabitant who has paid too much can demand that the other cohabitant pays what she or he should have paid according to their agreement (internally)
Enforcement of financial claims	If one of the cohabitants has paid the entire debt that they were both liable for either externally or internally, this cohabitant may have a financial claim against the other cohabitant. If such a

claim is not voluntarily paid, the other cohabitant may get help from the enforcement authorities (namsmyndighetene).
The authorities are Namsfogden and the District Court (tingretten).

Example:

Lars and Kari are cohabitants. Lars has established a loan of NOK 100,000 from the bank. Lars is liable externally (towards the bank) for the payment of this loan. Lars and Kari have agreed that they will be equally liable internally, and will pay NOK 50,000 each.

The bank can demand that Lars pays the entire amount of NOK 100,000, but cannot demand Kari to pay. Lars can still demand NOK 50,000 from Kari. If Kari does not pay, Lars can contact Namsfogden.

Legal possession

If the loan is not repaid, the creditor (typically the bank) can normally enforce the debt by taking legal possession of the assets belonging to the one who owes money. A creditor cannot take legal possession of assets belonging to the cohabitant of the debtor.

2.5 Other questions

2.5.1 Expenses and maintenance

Payment of expenses

Each of the cohabitants is in principle only obliged to pay the expenses related to the things she or he owns. This means that if one cohabitant for example owns a car, she or he will be responsible for the expenses related to this. The cohabitants may still agree that the expenses shall be divided in another way.

The duty to provide maintenance

Cohabitants have no duty to provide maintenance for each other (underholdsplikt) by law. This means that a cohabitant is not obliged to pay for the other cohabitant's needs, such as clothes, food or other expenses. However, the cohabitants may agree that they shall provide maintenance for each other. Such an agreement can be made in either verbal or written form.

2.5.2 Financial rights

It is important to note that both entering into, and ending a cohabitation may affect the cohabitants financial rights.

Benefits from «folketrygden» (The National Insurance Scheme)

If you wish to get information about how cohabitation affects trygdeytelser (social security benefits), you can contact your local NAV-office (Norwegian Labour and

Welfare Administration). They have a duty to provide information and guidance in a way you understand.

Taxes

If you wish to get information about how cohabitation may affect the calculation of your taxes, you can contact Skatteetaten (The Norwegian tax authorities). You can find information about the tax rules on https://www.skatteetaten.no/en/person/.

Life insurance

Cohabitants can appoint each other as beneficiaries to get a payout from life insurance. Appointing each other as beneficiaries can be an alternative for the cohabitants to secure each other if one of them dies. If you have questions regarding life insurance, you can contact your insurance agency.

3.0 FINANCIAL DIVISION AFTER COHABITATION ENDS

3.1 Freedom of contract

Cohabitants are free to agree on how they will distribute assets, values and debts if they break up. Such an agreement should be made in written form and can be made both during the cohabitation and when they break up. If the cohabitants have entered into a cohabitation agreement concerning the financial settlement, this

must be followed. You can read more about cohabitation agreements in section 2.1

Unreasonable agreement

If the cohabitants have an agreement concerning the financial settlement, one cohabitant may demand it to be set aside due to it being unreasonable. Please note that it is difficult to set an agreement aside as a result of it being unreasonable.

3.2 Division according to the property boundaries

The main rule is that the cohabitants keep their own assets and their own debt, unless they have a cohabitation agreement that states otherwise.

For information on how ownership between cohabitants is determined, see section 2.3 of the brochure.

Sole ownership (eneeie)

A cohabitant can keep any assets that are in her or his sole ownership. Possible increase in value or loss of value attributes to the sole owner.

Co-ownership (sameie)

The cohabitants can also own assets together (co-ownership). A co-ownership will not automatically end if the cohabitants break up.

If the cohabitants do not agree on who will keep their co-owned assets, they have two options. Each of the cohabitants can either sell their share of the asset, or demand the co-ownership to be forcibly dissolved (tvangssalg).

Until the co-owned asset has been sold, either voluntarily or by force, both cohabitants have an equal right to use the asset. This applies if they have not agreed otherwise. If you have further questions about this, please contact the enforcement authorities (namsmyndighetene).

3.3 Exception for the shared residence

If the cohabitants do not agree on who will take over their shared residence, one of them *may* have the right to take over the residence according to the rules in Husstands-fellesskapsloven (the Norwegian Household Community Act). This applies even if the other cohabitant owns the residence. These rules are therefore an exception to the main rule that cohabitants keep their own assets if they break up. The cohabitant who demands to take over the residence according to these rules must take the case to court.

The cohabitant who takes over a residence according to the rules in

Husstandsfellesskapsloven must buy out the other. She or he must pay the market value at the time it is decided that the cohabitant can take over the residence.

Four conditions must be met for a cohabitant to be able to take over the residence in accordance with the rules in the Husstandsfellesskapsloven.

1. **Age** — The cohabitants must be over 18 years of age.

2. **Two years of cohabitation or mutual children** — The cohabitants must *either* have lived together for at least two years, *or* they must have, have had or expect children together.

   Normally, no special documentation or registration is required to prove that the cohabitation is a household community. However, if there is any doubt as to whether the two-year requirement has been met, a message about change of address to Folkeregisteret (the National Population Register) could be a consideration in an assessment of evidence.

3. **Shared residence** — The property that the cohabitant demands to take over must "exclusively or mainly" have served as a shared residence for the cohabitants.

"Shared residence" means the cohabitants' permanent housing. It must be a residence where the cohabitants have lived together. The condition is not met if it is a holiday home that has not been the cohabitants' permanent housing.

For example, if the residence is used for farming, the condition will normally not be met. This is because the property has been used for business activities, and has therefore not "mainly" served as a shared residence for the cohabitants.

4. Strong reasons

The last condition is that the cohabitant must have "strong reasons" that justifies her or him to take over the residence.
A cohabitant may have "strong reasons" if she or he has interests and needs for taking over the residence that outweigh the other's need to keep the residence.

It must be considered specifically in each individual case whether a cohabitant has "strong reasons" for taking over the residence. Some considerations are, among other things, which parent the children will stay with and the children’s needs. In addition, other considerations are the cohabitants' connection to the place where the residence is located and the duration of the cohabitation.
If the residence is co-owned by the cohabitants and they do not have children,

it is possible that neither of them has strong reasons for taking over the residence. Neither of them can then demand to take over the residence according to the rules in Husstandsfellesskapsloven. If the cohabitants do not agree, they must terminate the co-ownership by forced sale according to the rules in sameieloven.

The right to take over a residence under Husstandsfelleskapsloven does not apply when the other party has “odelsrett” to the property (a special Norwegian form of inheritance right). It also does not apply when the residence has been received from the other cohabitant's family by inheritance or gift.

3.4 Right of use to a shared residence

Even if a cohabitant does not have strong enough reasons to take over a residence according to Husstandsfelleskapsloven, she or he can, in some cases, get a right of use to a shared residence. A cohabitant may get a right of use to the residence in accordance with the rules in Husstandsfelleskapsloven, if she or he has "special reasons".
It takes less to get a right to *use* the residence than to *take over* the residence. If one cohabitant gets a right to use the

residence, the other can claim market rent for their share of the residence.
The condition that the cohabitants must be at least 18 years old, also applies to the right of use. In addition, the cohabitants must have lived together for at least two years, or they must have, have had or expect children together. It is also required that the residence is a "shared residence" as mentioned in section 3.3.

A cohabitant can also get a right of use to the residence if the other cohabitant has "odelsrett" (a special Norwegian form of inheritance right). The same applies to a residence that one cohabitant has received from her or his family through inheritance or as a gift.

A right of use should be registered in the Land Registry (grunnboken). If the right of use is not registered, it may be lost due to a sale or forced sale of the residence.

3.5 Right to take over a tenancy agreement for a shared home

In some cases, a cohabitant may have a right to take over a tenancy agreement that is in the other cohabitant's name. The cohabitant who wishes to take over the agreement must have "strong reasons" to do so. The condition that the cohabitants must be above the age of 18 applies. They

must also have lived together for at least two years, or they must have, have had or be expecting children together. In addition, the tenancy agreement must concern the cohabitants' shared home.

The cohabitants must notify the landlord of the transfer. The landlord cannot oppose a transfer of a tenancy agreement, as long as the conditions of Husstandsfellesskapsloven are met.

3.6 Compensation

Main rule: Contribution without re-contribution

The main rule is that a cohabitant cannot claim compensation for any financial profit, or demand values back, that she or he has given the other during the cohabitation. This is called the principle of contribution without re-contribution (ytelse uten gjenytelse).

Example: Lisa gives her cohabitant Arne 20 000 NOK to renovate the kitchen in their apartment, which Arne owns. The main rule is that Lisa cannot demand to get this money back.
The cohabitants are still free to agree that one of them shall pay the other a compensation.

If the cohabitants do not agree that one of them should receive a compensation from the other, either one of them can take the

case to court. The court may in *some* cases decide that one cohabitant shall pay the other a compensation. There are two conditions that must be met for the court to decide this. Please note that it takes a lot to meet these conditions.

1. **Financial profit** The cohabitant who claims compensation must have provided the other cohabitant with a significant financial profit. This can, for example, be done by direct contribution of money or by renovation work on the other person's property. The cohabitant can also give the other a significant financial profit by doing more than their share of housework, for example by caring for mutual children, or paying more than their share of the household expenses.

2. **Reasonableness** In addition, it must be reasonable to grant a compensation. Whether it is reasonable to grant compensation is determined by considering, among other things, the cohabitant's finances, their need for funds in the future and the duration of the cohabitation.

3.7 Debt

The cohabitants keep their own assets, as well as their own debt, in the event of a breakup. A cohabitant who owes money to

a creditor, for example a bank, will continue to be liable after a breakup. Please note that agreements between cohabitants regarding changes in who is liable for debts (internally), does not have an effect on the who is liable towards the creditor.(externally)

Example: The bank must, in most cases, approve a transfer of a mortgage.(external liability) A cohabitant should therefore not transfer the ownership of a house to the other cohabitant until she or he has received a written declaration from the bank that frees her or him from the liability as a debtor.

4.0 OTHER MATTERS

4.1 Rent when the residence is co-owned

When the cohabitation ends, one of the cohabitants will usually move out of their co-owned residence. The person who moves out can usually demand rent from the cohabitant who stays.

The rent must correspond with market rent. The cohabitant can only demand rent from the other cohabitant for her or his share of the residence. The cohabitant can make a claim for rent when they move out, or anytime thereafter. The claim is only

valid from the time it is made, meaning that a cohabitant cannot demand payment for the time before the claim was made. JURK recommends that claims for rent are made in written form, because they are easier to prove the existence of.

The cohabitant who moves out must still cover her or his financial obligations connected to the residence, as long as the cohabitants do not agree otherwise. This applies to, for example, mortgages and payments of necessary or fixed expenses associated with the residence.

5.0 WHO CAN YOU CONTACT FOR MORE HELP?

JURK	Skippergata 23, 0154 Oslo Phone number: 22 84 29 50 www.jurk.no
Jussbuss	Skippergata 23, 0154 Oslo Phone number: 22 84 29 00
Jussformidlingen in Bergen	Sydneshaugen 10, 5007 Bergen Phone number: 55 58 96 00
Jusshjelpa in Nord-Norge	Terminalgata 38, 9019 Tromsø Phone number: 77 64 45 59
City of Oslo Free Legal Aid (Oslo kommune Fri rettshjelp)	Storgata 19, 0184 Oslo Phone number: 23 48 79 00

NAV (Norwegian Labour and Welfare Administration)	NAV has offices in all municipalities in Norway. Phone number: 55 55 33 33
The enforcement authorities (Namsmyndigheten e)	You can find the contact information of your local enforcement authorities on the website: https://www.politiet.no/tjenester/namsmann-og-forliksrad/kontakt-namsmann-og-forliksrad/.
The Norwegian Mapping Authority (Kartverket)	Kartverksveien 21, 3511 Hønefoss Phone number: 32 11 80 00
The Courts of Norway	If you want information about legal proceedings, you can read more on the website: www.domstol.no/en.
Attorney	If you need help from an attorney, you can find a list of local attorneys working with family law on the website: www.advokatenhjelperdeg.no.

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