



Protecting the assets of unmarried couples

By [Sharon Anne Waldrop](#) • Bankrate.com

A romantic relationship does not benefit from the same laws and regulations that protect married couples. Witness the condo dispute between Jennifer Aniston and Vince Vaughn in the newly released movie "The Break-up" -- both love the jointly owned condo, and neither one wants to leave.

Some 5.5 million unmarried couples dwell together, representing slightly more than 10 percent of all households. Married or not, couples are purchasing real estate and businesses together. And since it can be easier to get a divorce in this country than to resolve a property or business dispute, unmarried couples would be well-advised to sit down and circumspectly discuss all contingencies before making any big purchases.

It may not be the makings of a romantic comedy, but it could save a lot of tears later on.

"Talk now about how you are going to resolve disputes that may come up later," says Brent Rosenthal, a business and real estate attorney and partner at Buckingham Doolittle & Burroughs LLP in Columbus, Ohio. Rosenthal says that it's hard to get people to focus on this because they come in with stars in their eyes, thinking they will be together forever. He asks his clients to consider what they want to happen to each person's interests if the relationship ends or one party of the couple passes away.

"Treat it like a business arrangement, and enter into a written agreement that describes what will happen," he says. "Go under the assumption that people don't last forever."

There are benefits to hiring an uninvolved third party, such as a lawyer, to guide you through a property or business agreement, says Rosenthal. "I have no emotional stake in this at all, so I can sit back and look at it totally disassociated from the deal," he says.

Why do unmarried couples jump into purchasing a home or business together without doing preliminary homework? "Nothing gets taken care of when people are in love. It only gets taken care of when people are breaking apart," says Stacy D. Phillips, a founding partner of Phillips, Lerner, Lauzon & Jamra LLP, a family law firm in Los Angeles, and the author of "Divorce: It's All About Control: How To Win the Emotional, Psychological and Legal Wars."

"People don't want to deal with it," she says. "And sometimes, frankly, the person who wants to deal with it is the person who will be left out."

Protect your assets

"I think that most people who are part of an unmarried couple assume that the law is going to look at them in some special status, or a different status, and that's just not really true," says **Beverly Pekala**, principal of her own firm in Chicago. "Each state regulates (these situations) quite differently."

There is no asset protection during a breakup for unmarried couples who reside in one of the few states that recognize common-law marriages. The laws protect only legally married couples.

"The way we refer to it is community property law versus marital property law," says **Pekala**. "The divorce laws have all been codified by statute, so what started off 200 years ago as old English common law, which came over from England, has now been codified. In each of the 50 states, you have a statute regarding divorce, which the legislature of each state wrote, and it's either based in community property or it's based in marital property."

The outcome of asset distribution for married couples is pursuant to the divorce laws, whether it's marital property or community property. For unmarried couples, the outcome in community-property states and marital-property states is about the same.

Certified financial planner Debra Neiman, co-author of "Money Without Matrimony," suggests that unmarried couples go into a property or business purchase with a written agreement.

"You can call it a property agreement or a partnership agreement. It spells out who contributed what toward the purchase. Very often, one person has the capital, and the other has the brawn and contributed the sweat equity."

Prepare 'what-if' contingencies

The written agreement of a property purchase should contain provisions that address "what-if" contingencies. For example: If the relationship dissolves, Party A will have the right of first refusal to buy the house from Party B. Three appraisals of the property will be obtained, and the average will be used as the purchase price, says Neiman.

"Unmarried couples should have durable powers of attorney," she says. "Each one would have their own. They can name each other to make legal or financial decisions if something happens."

For example, if one party suffers a medical crisis and is unable to make business or financial decisions, the second party with a durable power of attorney could do so on the first party's behalf. Otherwise, the second party would have to go to court and ask for guardian status before proceeding.

A written agreement should be bulletproof, and it is a good idea to have it prepared by an attorney. "You don't want anyone to later say that they were forced to sign it," says Neiman. "Married couples have divorce court, rules and formulas. Unmarried couples do not. This is a way to set up your own rules from the get-go."

What if the relationship ends and neither party is willing to sell the property or business? That's a situation most couples would want to avoid.

"We encourage our clients to enter into a property management agreement, or a comprehensive cohabitation agreement," says Elizabeth T. Erhardt, partner at Sideman & Bancroft LLP in San Francisco. The parties are free to contract as they wish, as long as it's not for an illegal purpose, and the courts will enforce the agreement.

What's in a title?

Deciding how to title property can be complex, especially in an unmarried-couple relationship. It's wise to consult with a tax or legal professional before making a final decision, but there are some basics to consider.

If both parties contribute equally, they may choose to own the property jointly with rights of survivorship. A 50-50 split makes sense if there is an equal contribution to the property, but this isn't always the case.

"You have to think it through, because with joint (tenancy) and rights of survivorship, that deed says that if one party passes away, the property automatically goes to the other person," says Neiman. "State laws dictate property rights. Though some states may not call it 'joint tenants with rights of survivorship,' the law is based on the same assumption -- that upon death of one of the owners, the property passes to the other."

If the parties contributed unequally, they may want to hold the property as "tenants in common," where the percentage owned by each person is specified. If one party passes away, the person named in the will of the deceased will receive the remaining piece of the pie.

"A tenancy in common is an interest in land in which you have your own undivided interest," says Rosenthal. If the property is sold at a later date, each party will receive his or her percentage of the proceeds.

A downside risk to a tenancy in common is the chance of losing a share of the property in a dispute. If one party is sued, a court order could require the sale of the house, in which the party who is not sued will keep his or her share of the proceeds, and the creditor will be paid from the proceeds of the other party.

In the event of the death of one owner, it could be problematic if the deceased's share of the house is left to a relative who does not get along with the surviving party. In that event, the parties may not agree about what to do with the property. What if one person wants to sell the place and the other wants to keep it, but cannot afford to buy out the other?

Ideally, the parties involved will be able to work something out.

"Ordinarily, the only way out would be to file a suit for partition of the property, which is basically the sale and distribution of the proceeds of the property," says Rosenthal. The courts have discretion to work out an equitable resolution for both parties. A suit of partition takes time, and it is something that both parties may want to avoid.

Also, be concerned about title insurance. "You want to be sure that title insurance, as well as property insurance, specifically covers both individuals," says Erhardt.

William L. Abrams, a tax lawyer and partner at Abrams Garfinkel Margolis Bergson LLP in Los Angeles and New York, suggests that co-owners of property do not commingle personal assets. Keep only a minimal amount of funds in a joint account for the convenience of paying expenses related to the property, he says.

LLC for investment property, businesses

Unmarried couples may want to consider putting ownership of income property into a limited liability company. An LLC offers protection from liability. If one party gets personally sued, the property cannot be taken away. Rosenthal reports that in a dispute, the only thing a creditor could do is go after the interest of received distributions from the LLC if, and only if, the LLC declares a dividend.

In addition, each owner will receive his or her usual share of tax breaks, such as deductions for mortgage interest and real estate taxes, as well as capital gains exclusions. The LLC, as the owner of the property, receives the tax exemptions, but passes it through to its owners.

When couples come to **Pekala** and tell her that they want to go into business together, she asks them, "What's your idea? Let's talk about it." During this conversation, she often notices that one party starts talking, and the other doesn't agree with what is being said. "It's human nature that everybody has their own opinion, and everybody has their own assumptions about the best way to do something," she says.

"Whether you have a corporation, partnership or an LLC, there should be a written agreement. In the event of a corporation, it's called a shareholder agreement. Participants in a partnership may opt for a partnership agreement, although it is not legally required. There is a disadvantage to a partnership, namely, the risk of both parties losing their home and/or savings accounts if they are sued. Owners of a corporation or LLC do not carry this risk."

Pekala is also a fan of the LLC, which is the combination of a partnership and a corporation, though, she says, the S corporation is "very frequently used as the legal structure for unmarried couples who have a business." Both the S corporation and the LLC provide liability protection as well as tax advantages, she says. For both business structures, owners will avoid double taxation, which involves paying tax on corporate profits, then paying taxes on them again when the profits are distributed to the owners.

While making property-purchase or business-structure decisions can be complicated for everyone involved, laws are in place to protect married couples in the event of a split. Since unwed couples are more vulnerable, it behooves them to take measures to protect their own interests before getting entangled in financial or business ventures.

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