

INITIAL CHECKLIST FOR DRAFTING COHABITATION AGREEMENT
(What to Consider and What Information We Need)

ISSUES TO CONSIDER IN DRAFTING PRENUPTIAL AGREEMENT

1. **Pre-Agreement Cohabitation:**
 - a. Was there any period of cohabitation before this time? If so, how do you want to treat property acquired previously?
 - (1) Is anything now considered joint property, or does each party have a separate property interest in any jointly-acquired property?
 - (2) Will its label depend on how the property is currently titled?
 - (3) What about untitled property?

2. **Title Changes to Existing Property:**
 - a. Is any property to be considered separate property going forward despite now being titled as jointly-owned property?
 - b. Is any property to be considered jointly-owned property going forward despite now being titled as separate property?

3. **Normal Living Expenses, i.e., utilities, mortgage, property taxes, homeowner's insurance, dry cleaning, housekeeping, landscaping, pool care, etc.**
 - a. Do you wish to specify who is going to be responsible for normal living expenses?
 - (1) Will the arrangement change if one party is working and the other is not in the future?
 - b. Will each party contribute a percentage to the normal living expenses or a joint account to be used for that purpose?
 - (1) If so, are contributions to be scheduled, or left completely voluntary?

4. **Medical and Dental Insurance and Uncovered Expenses:**
 - a. If you wish to make specific arrangements on such expenses, which party will be responsible, or will each cover his or her own expenses?
 - b. Are specific arrangements intended regarding such expenses for any minor children?

5. **Taxes:**
 - a. Is it your intention to file in any way other than separately?
 - b. Do you intend to allow tax return filings to affect the characterization of any property, or be explicitly irrelevant to characterization?

6. **Wages and Salaries:**
 - a. Is the intended treatment of each party's wages or salary from employment to be as the earning party's separate property, or as joint property to any extent?
 - b. Is there income other than wages or salaries (for example, from existing dividends or investments) expected to be received, and will that income be treated any differently?
 - c. Is it anticipated that any other property might be accrued other than wages, salaries, and other income? If so, how is that property to be characterized?

7. **Retirement Benefits (Pension, 401(k), Individual Retirement Account):**
 - a. How will accruing retirement benefits be treated? This necessarily includes a discussion of any survivorship benefits and whether or not they will be available.

8. **Gifts:**
 - a. If gifts are contemplated, is there to be a requirement of donative writing?
 - (1) If so, it requires actually documenting each such gift (or gifts of more than a set amount).
 - (2) If not, no documentation is required, but the chances for disagreements as to what did, and did not, constitute a gift increase considerably upon a Terminating Event.

9. **Definition of "Terminating Event":**
 - a. A "*terminating event*" may be defined by the parties to determine when the terms of the Agreement cease to apply. There are many choices.
 - (1) Simplest is cessation of cohabitation *or* either party's written notice to the other of an intention to remain apart, provided the parties actually separate. Note the historical problem of defining "cohabitation."
 - (2) Other potential "terminating events" could include marriage of the parties, death of either party, the birth of a child of this relationship, disability of a party rendering that party unable to maintain gainful employment, or an agreed length of time.
 - b. If termination is not defined by the parties, it will be defined by law at the place of any legal proceedings. Nevada has no current clear law on this subject.

10. **Distribution of Property and Support Upon Occurrence of Terminating Event:**
 - a. Will there be any distributions of property, cash, or other assets upon a Terminating Event?

- (1) If so, when will this occur – 10 days, 30 days, 60 days, 90 days, or some other later time?
- b. Will there be any kind of money paid, whether considered “palimony” or otherwise?
 - (1) If so, lump-sum, periodic, or other, and set in a specific sum or according to some accrual formula?

11. **Rights Upon Death:**

- a. In the event of either party’s death, how should each party’s estate be treated, either before or after a Terminating Event has occurred?
- b. Is there to be a requirement that either or both parties maintain life insurance in any given amount for one another or any minor children?
- c. Should the terms effective upon cessation of cohabitation automatically apply at death as well?

12. **Amendment or Termination of Agreement:**

- a. Will there be a date that the parties will be allowed or required to renegotiate or amend the Agreement? (Our general policy is to allow parties the opportunity to amend the Agreement at any time so long as the amendments are written and notarized by both parties).
- b. A date at which the Agreement automatically expires, if any.
- c. Will the Agreement automatically be amended by the passage of time? For example, some people wish to include provisions allowing for the recharacterization of certain separate property to joint property (thus, divisible) if the parties remain together a certain amount of time.

13. **What Provisions, if Any, Are Desired Regarding Future Transmutation of Property:**

- a. Separate property to joint property.
- b. Joint property to separate property.

14. **Who is the Other Party’s Attorney?**

15. **What Provisions, if Any, Are Desired Regarding Future Joint Debt?**

16. **Are Children Involved?**

- a. Is there a desire to provide in advance for how school or other anticipated expenses will be covered? If so:
 - (1) Will the parties split costs, or will one party be solely responsible?
- b. Do child care costs (daycare) or any other special expenses need to be addressed?

17. **Choice of Law:**

- a. What State's law will govern the execution and enforcement of the Agreement?
18. **Confidentiality:**
- a. Are any special arrangements required confidentiality, absent disclosures required by legal or administrative processes?
19. **Attorney's Fees:**
- a. In the event the Agreement is challenged (for whatever reason), do you wish to include a provision making the challenging party entirely responsible for the other party's attorney's fees if that challenge is unsuccessful?

INFORMATION WE NEED

20. Lists from both parties detailing their property, debts, and income, as these will be attachments to the Agreement as Schedules. Unless you already have a profit & loss or similar updated document, the easiest way to organize the information may be to completely fill out the financial disclosure form used by the court in divorce cases, copies of which can be obtained at <http://www.willicklawgroup.com/divorce>.
21. The approximate value of all such property (and any property already co-owned by the parties, should any exist), and the approximate sum of any separate or joint debt.
22. A proposed marriage date, or any other known future event that would alter the terms of the Agreement.