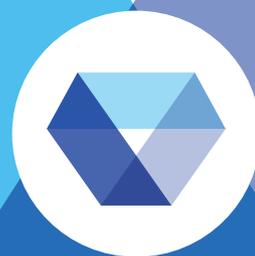




MINISTRY FOR SOCIAL DIALOGUE,
CONSUMER AFFAIRS AND CIVIL LIBERTIES



THE COHABITATION LAW

What is the Cohabitation Act?

Parliament has approved a new law which recognises and regulates different kinds of cohabitation. The aim of this Act is to protect cohabiting couples by legally recognising their rights and duties. Prior to this Act, Maltese law did not recognise, and therefore did not offer protection to cohabiting couples.

The Cohabitation Act caters for couples who do not wish to be bound by either marriage or civil union, but who nonetheless wish to have their relationship respected and given its deserved rights. In this respect, the law was drafted in an open and flexible manner, recognising that every couple has its own unique preferences of how it wishes to regulate itself. Thus, the law provides for a wide range of possibilities for cohabiting couples, while at the same time protecting vulnerable parties.

Who can cohabit?

The Cohabitation Act allows any couple who considers itself to be in an intimate relationship and wishes to live together to enter into cohabitation in terms of this law. Persons who are legally separated may also be recognised as *de facto* cohabitants.

In terms of this law, cohabitation has the same limitations imposed by the Marriage Act, meaning that cohabitation may not occur in the following cases:

- With a person who is under age;
- Between ascendants and descendants in the direct line;
- Between siblings;
- Between persons being related by affinity in the direct line;
- Between the person adopting and the adoptee;
- Between persons, one of whom is unable to give his consent.

Moreover, the Cohabitation Act imposes additional conditions affecting the validity of the cohabitation contract, which are the following:

- Where any one of the parties is married or are in a civil union;
- Where any one of the parties is already in a contract of cohabitation with third parties or in a unilateral declaration of cohabitation;
- Where the relationship is already regulated by a foreign law that provides for rights and obligations and has legal effects in Malta.

How does the Cohabitation Act apply? Which kinds of cohabitation are legally recognised?

The Act provides for 3 different forms of cohabitation:

(i) *De facto* cohabitation:

Couples who are already cohabiting and have done so for at least the past two years are automatically recognised as *de facto* cohabitants. No legal document is necessary for this kind of cohabitation, and the parties may also be legally separated. *De facto* cohabitation does not give rise to mutual legal rights and obligations between cohabitants, however, after two years of cohabitation, the couple is granted a limited set of rights, namely:

- Cohabitants are considered as each other's tenant for all intents and purposes of the law with regard to the rents of their common home;
- Cohabitants shall be considered as each other's next of kin;
- Cohabitants shall have the right to take decisions relating to each other's medical care;
- Cohabitants may not be compelled to be witnesses against each other in legal proceedings.

(ii) Cohabitation by means of a contract:

Persons who have the intent of cohabiting or persons who are already cohabiting and wish to formally regulate their cohabitation may do so by entering into a contract of cohabitation. The contract is drafted and signed before a notary and registered in the Public Registry, thus making the contract a public deed.

The contract is flexible and can be drafted according to the couple's wishes and needs. As a minimum, however, the contract must state the following:

- The house that shall be deemed to be the common home of the cohabitants, as well as the legal title of each cohabitant on the said home and the transfer of the rights on the said house in the event of separation;
- The division of assets and liabilities in the event of separation;
- Maintenance, if one of the cohabitants is or becomes dependent on the other cohabitant, and the annual percentage mark up on the said maintenance, if the couple wishes to establish such maintenance;
- Matters related to the cohabitants' children, whether or not such children are the result of their relationship or a previous one, including their care and custody in the event of separation, the right to live in the common home, and the maintenance of any dependent children.

Any other issues are left in the hands of the couple to decide, as long as no third party rights are interfered with.

The Act provides for a large number of rights to registered cohabitants, since the level of commitment shown by the couple in this case is reflected in the said rights and duties. These rights and duties are similar to those which married or civil union couples enjoy, including, among others, succession rights and social security rights.

(iii) Cohabitation by means of unilateral declaration:

The Act gives an opportunity to one party to the relationship to declare an existing cohabitation by means of a judicial letter. This form of cohabitation applies to those couples who are in disagreement on how and if their relationship should be regulated, which could potentially give rise to situations where a party is in a vulnerable situation. In this case, the Act provides the possibility to be formally regulated by means of this letter.

Unilaterally declared cohabitations will be accepted by the State for five years after the coming into force of the Act. This period is envisaged to give vulnerable parties enough time to regulate themselves by means of this letter. Following the end of these five years, unilateral declarations may not be filed.

Once the judicial letter is registered, and it is ascertained that there are no impediments or objections to it made by the other cohabitant, the two parties will have the basic rights and duties listed in the Act. No third party will be affected by this mode of cohabitation. The couple is always at liberty to choose to enter into a contract of cohabitation as previously described, following which the judicial letter would become null and void.

How may a cohabitation be terminated?

There is no need for lengthy and complicated procedures in the event of a breakdown of the relationship. In the case of a *de facto* cohabitation, the Act does not interfere with how the parties wish to end their cohabitation.

In the case of a registered cohabitation, the contract may be terminated by means of a registered public deed. The cohabitation may also be ended by means of an application filed before the competent Court, which will then decide on the terms of the separation.

Following the conclusion of the cohabitation, the rights and duties emanating from the contract may be enforced, including, among others, the right of cohabitants to continue residing in the common home for a reasonable period, until alternative accommodation is found.

A contract of cohabitation or unilateral declaration are both ended if the couple decides to enter into a contract of marriage or a civil union.