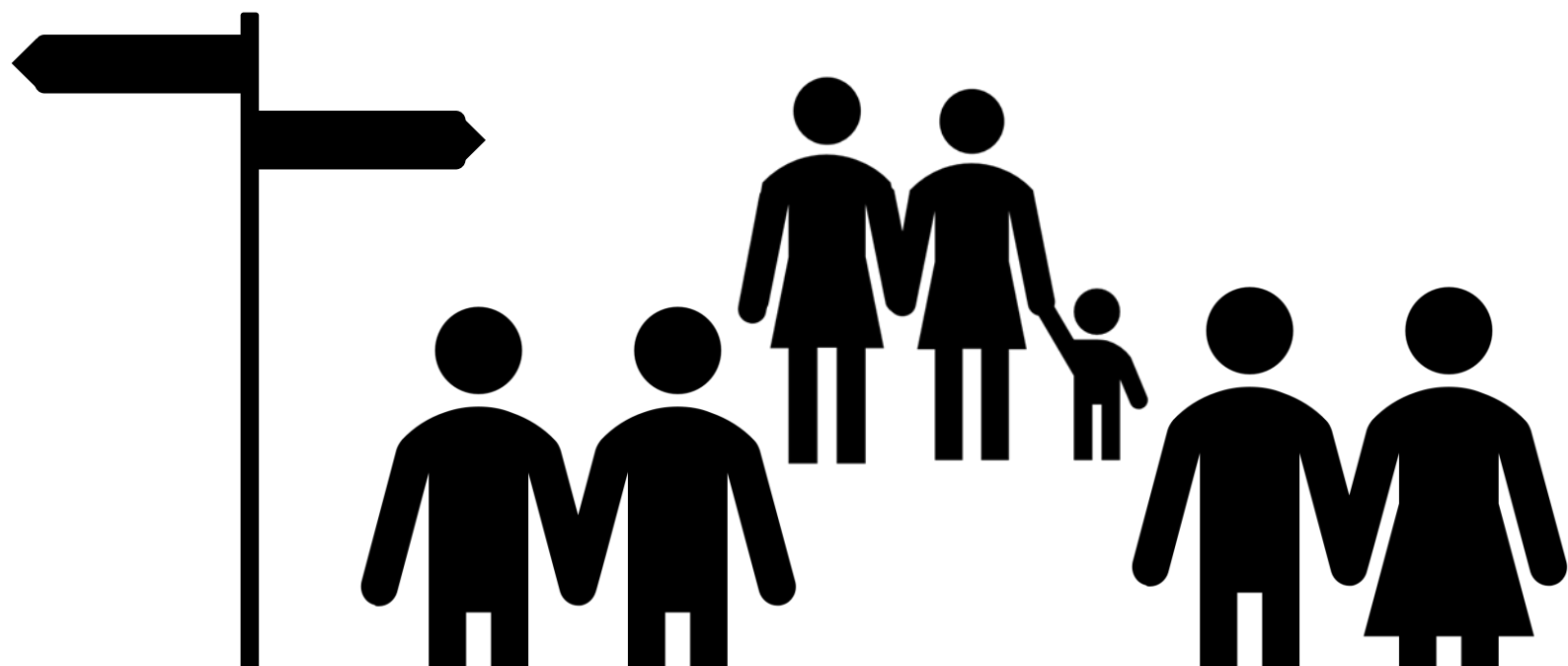


# Self-Help Legal Manual for Unmarried Partners





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## **About This Manual**

**This manual does not provide legal advice and is not a substitute for legal advice.** It provides legal information, but only your own attorney can give you specific legal advice that takes into account all the facts and circumstances in your individual case. The information contained in this manual is current as of December 2016. Please feel free to copy and share this manual.

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# SELF-HELP LEGAL MANUAL FOR UNMARRIED PARTNERS

## Chapter 1 — Introduction

This manual provides legal information on how to structure your finances, property relationship, and family relationships while you are in an unmarried relationship and living together. It also addresses your legal rights and responsibilities in the event that you separate from your partner.

When you understand the law, you and your partner can make choices that will help protect your own property and individual rights. The special rules governing married couples (such as those relating to property ownership, inheritance, and child custody) do not apply to unmarried couples. To compensate for this, you should consider taking some extra measures to protect yourself and your partner.

### A. **Why is the law governing the legal rights and duties of “unmarried partners” increasingly important?**

Living together without getting married is a growing trend. According to the 2010 Census data, more than 7.5 million unmarried couples live together in the United States. This is a 25% increase over the 2000 figures, and an even more dramatic 138% increase since 1990. In fact, the average American now spends most of his or her life unmarried.

Cohabitation — living together without getting married — is an increasingly prevalent lifestyle in Ohio and the United States. The share of 30 to 45-year-olds living as unmarried couples in the U.S. has more than doubled since the mid-1990s. (Pew Research Social & Demographic Trends, 2011). Moreover, the proportion of adults who have ever cohabited is much larger than the share currently cohabiting, and it has grown to become a majority. (National Center for Marriage and Family Research, 2010). Many intimate partners do not marry — or put off marriage — because they cannot afford it, they fear it is financially risky, they want to test-drive their relationship, or, until recently, they could not legally marry as same-sex partners in their state. The majority of same-sex couples are unmarried, although the number of same-sex marriages is rapidly growing as a result of the United States Supreme Court’s 2015 decision in *Obergefell v. Hodges*.

Demographic trends in Ohio reflect these national trends. According to the Annie E. Casey Foundation, in 2013 235,000 children in Ohio were living with cohabiting domestic partners and 918,000 children were living in single-parent families (in many cases following the breakup of unmarried couples). In addition, from 2000-2010, the number of identifiable same-sex couples in Ohio increased from 18,937 to 28,602, an increase of 51%. (U.S. Census). About 20% of the same-sex couples are raising children.

Unmarried cohabitation is also an important part of family formation in the United States. About 20% of women become pregnant in the first year of living with a partner, and go on to give birth. (Bloomberg News, April 4, 2013). Women without a high school diploma (and therefore lower-income) are more likely to become pregnant, with a third of them

becoming pregnant in the first year of living with a partner. Many unmarried partners — including same-sex couples — have or adopt children, and the use of assisted reproductive technology has introduced new legal and practical complications. When unmarried couples split up, child custody and visitation disputes may arise between unmarried partners and between unmarried partners and third party caregivers. (The number of Ohio children living with grandparents and other kinship caregivers has soared to more than 200,000 children.) There are now many unmarried partners with “non-traditional” families whose legal rights, remedies, and obligations are not well-understood. Moreover, their unequal economic status often places one partner — most often women — at a serious disadvantage and in greater jeopardy of losing or being unable to enforce their legal rights, or to take appropriate legal steps to protect themselves, their children, and their property.

When unmarried couples live together, they do not have the same legal rights as married couples. For example, unmarried partners in Ohio do not have legal rights to visitation or custody with respect to their unmarried partner’s children — even when both parents intended to raise and care for the children together. Unmarried partners can take affirmative steps — such as cohabitation and shared custody agreements — to more clearly define their legal rights and obligations. These agreements must be both comprehensive and easily understandable. Unmarried partners should also consider other legal documents to achieve their estate, property, and tax planning goals and protect their assets to avoid legal pitfalls.

There are a wide range of legal issues that both same-sex and opposite-sex unmarried couples may encounter while living together or after they split up. These include property ownership; debt, credit and tax matters; the legal relationship of children to their parents’ unmarried partners; child adoption by unmarried partners; child custody and visitation disputes; and methods of dispute resolution.

**B. How have the laws governing the relationship of unmarried partners evolved over time?**

Before the 1970s, the laws of Ohio and other states strongly discouraged people from living together outside of marriage. Existing laws reinforced a strong social stigma against nonmarital cohabitation. Most states had laws criminalizing adultery, fornication and sodomy. Adultery still constitutes legal grounds for obtaining a divorce, dissolution of marriage, or legal separation in Ohio and most other states.

However, the social stigma attached to nonmarital cohabitation has greatly diminished over time as a result of changing social attitudes and values. In turn, laws have changed, and state legislatures and courts have developed new laws or creatively applied existing legal doctrines to nonmarital relationships. For example, most states have abolished any criminal adultery, fornication and sodomy laws. In the landmark case of *Lawrence v. Texas*, the United States Supreme Court in 2003 struck down laws prohibiting “sodomy” between two persons of the same sex. Such laws — and other criminal laws explicitly limiting consensual adult sexual activity — are unconstitutional because the Due Process Clause of the Fourteenth Amendment protects individual decisions about intimate sexual relationships by both married and unmarried persons from intrusion by the state.

In the same vein, laws have changed or expanded to facilitate the resolution of legal disputes regarding economic and family issues arising between unmarried partners. Attorneys and legal publishers have also developed form “cohabitation” or “living together” agreements that unmarried couples may use to resolve or prevent legal disputes between them.

**C. What is unmarried cohabitation?**

Unmarried cohabitation consists of two unmarried adults who live together as a couple but who are not actually married. You are NOT involved in unmarried cohabitation if you have:

- (i) a valid marriage license, **OR**
- (ii) a valid common law marriage (in Ohio, common law marriages established before October 5, 1991 are valid. After that date, common law marriages are no longer possible in Ohio).

**D. What is the legal difference between marriage and an unmarried cohabitation?**

When you state your marriage vows, you enter into a legal contract governed by the laws of Ohio (or the state in which you marry). The marriage contract follows a specific set of rules, which range from the couple’s property rights to custodial rights over children.

Unmarried couples do not automatically have the same legal protections or rights that married couples have. They may have a joint obligation to pay the rent or the mortgage if they buy or rent a place together, but without marriage this obligation is the same as if they were just roommates. Living together does not create a binding relationship, nor does it entitle you to a property settlement (or inheritance) should you break up (or should one of you die).

**E. Is there an intermediate legal status between marriage and unmarried cohabitation?**

Yes, in some states and municipalities there are special laws or ordinances granting most or all of the legal rights and privileges of marriage to unmarried partners who enter into and register as “domestic partnerships” or “civil unions.” Most of these domestic partnership and civil union laws are limited to same-sex couples, but some ordinances extend benefits to both same-sex and opposite-sex couples. Many large companies also extend employment benefits to same-sex domestic partners.

However, some states and municipalities are now considering whether they should terminate their domestic partnership and civil union registration programs in light of the United States Supreme Court’s recent decision legalizing same-sex marriage in all 50 states. (See discussion below.) For example, the City of Cleveland terminated its same-sex domestic partnership employee benefits program after concluding that the program is no longer needed because same-sex partners can now legally marry.



**F. Is common law marriage a viable alternative for unmarried couples?**

Marriage is the legal union of two people. The legal rights and responsibilities of married partners (spouses) are defined by the laws of the state in which they live. In the nineteenth century, many states enacted laws allowing a man and a woman to establish a “common law marriage” — with the full legal rights and responsibilities of marriage — by living together for a significant period of time and holding themselves out to be married. Nearly all states, including Ohio, have abolished common law marriage. The Ohio legislature repealed the state’s common law marriage statute effective October 10, 1991. Common law marriages created before that date remain valid Ohio marriages, and those couples who move to other states should be recognized as having valid common law marriages in those states. Moreover, Ohio continues to recognize any common-law marriages that were properly formed and remain valid under the laws of any other state.

Accordingly, in Ohio and most other states, a legal marriage now requires a marriage license and marriage ceremony. An unmarried couple that lives for a significant amount of time and holds themselves out to their neighbors, friends and community as married is still unmarried in the eyes of the law. Unmarried couples must agree to a cohabitation or living together contract if they wish to establish the legally binding terms of their relationship and enjoy some of the legally enforceable rights and responsibilities that accrue to married spouses.

**G. What is the impact of the United States Supreme Court’s 2015 decision legalizing same-sex marriage throughout the country?**

In November, 2004 Ohio voters passed the Defense of Marriage Act (DOMA) amendment to the state constitution. The amendment not only prohibited the state governments and any local governments in Ohio from creating or recognizing same-sex marriage in Ohio, but prohibited any governmental entities in Ohio from granting the legal benefits and attributes of marriage to unmarried partners.

In Ohio, both before and after the passage of DOMA, only a man and a woman could get married. Ohio courts and government agencies were also forbidden by DOMA from recognizing any same-sex marriages that were legally performed in the growing number of states authorizing and recognizing same-sex marriage.

That all changed on June 26, 2015, when the United States Supreme Court overturned the existing laws of Ohio and many other states by legalizing same-sex marriage in all 50 states. In *Obergefell v. Hodges*, the Supreme Court held that the Fourteenth Amendment requires a State to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

The lead plaintiff in *Obergefell*, James Obergefell, had challenged Ohio’s refusal to recognize his out-of-state marriage to his longtime partner, John Arthur. They had met and fallen in love over two decades previously. They lived together and established a lasting,

committed relationship. In 2011, however, Arthur was diagnosed with incurable and fatal ALS disease. They then decided to marry before Arthur died. To get married, they traveled from Ohio to Maryland, where same-sex marriage was legal. Since it was very difficult for John Arthur to move because of his severe illness, the couple was wed inside the medical transport plane as it remained on the ground.

Because Ohio law did not permit Mr. Obergefell to be listed as a surviving spouse on Arthur's death certificate, he filed a federal lawsuit requesting that the State of Ohio be ordered to list him as the surviving spouse on his deceased partner's death certificate. Three months later, John Arthur died.

Opponents of same-sex marriage argued the timeless institution of marriage would be undermined if it were extended to same-sex couples. However, in the Court's majority opinion, Justice Kennedy observed that Mr. Obergefell and other petitioners were in fact seeking to expand and strengthen marriage — not devalue it. They sought marriage or recognition of their out-of-state marriages because of their respect and need for its privileges and responsibilities. Further, the right to marry is a fundamental right inherent in personal liberty, and under both the Due Process and the Equal Protection Clauses of the Fourteenth Amendment couples of the same sex may not be deprived of that right. Any state laws are invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.

The full impact of the Supreme Court's decision in *Obergefell* on same-sex couples who legally marry or who are contemplating marriage remains unclear. Couples must still weigh the pros and cons of marriage versus living together without marriage. There are some important family law-related issues that remain unresolved after *Obergefell*. For example, is a same-sex spouse automatically presumed to be a child's parent when a child is born to the other spouse — possibly by surrogate parenting — during the marriage? Will same-sex married couples be able to jointly adopt children in the same manner as opposite-sex married couples? (In Ohio, yes.) Can state law draw a legally valid distinction between marriage and adoption to disadvantage same-sex married couples? State and federal courts will have to address these issues. For example, a federal lawsuit challenging the State of Mississippi's law forbidding adoptions by same-sex couples was filed in federal district court in the summer of 2015, but was later dismissed. Similar cases are being filed around the country.

There are also difficult and unresolved issues regarding the intersection between family law and property or tax law. If two same-sex partners live together for a long period of time before forming a civil marriage after the legalization of same-sex marriage by the Supreme Court, can they argue and can a court find that the beginning date of their marriage — for purposes of deciding the distribution of “marital property” in a later divorce or legal separation proceeding — is the date they began living together as a single household rather than the subsequent date of their ceremonial marriage? The answer to this question will determine which property belonging to the same-sex spouses qualifies as marital property and is thus subject to property distribution between the same-sex spouses in their divorce or legal separation case. An even trickier question is whether a same-sex couple whose out-

of-state marriage predates the Supreme Court's decision in *Obergefell* can apply for retroactive state income tax refunds from a state where they resided but were formally prohibited from marrying, such as Ohio.

Although the options for same-sex couples have radically expanded because of the *Obergefell* decision, many (perhaps most) same-sex couples will likely remain in nonmarital relationships and their relationships will continue to be governed by the more slowly evolving state law governing unmarried "living together" relationships. Most of the discussion that follows in this manual addresses the primarily contract-based law that applies to unmarried partners in Ohio. That law remains highly relevant to same-sex couples who do not get married or are weighing the advantages and disadvantages of getting married. Furthermore, unmarried partners — both same-sex and opposite-sex couples — who already have a cohabitation agreement and who are now thinking about marriage should consider if their agreement will still be enforceable after they tie the knot, or whether they should prepare a new prenuptial agreement if they decide to marry and want to keep the same arrangements they had before.

## Chapter 2 —“Living Together” or Cohabitation Agreements

You can use a contract to establish your legal rights and duties in an unmarried partnership. This important legal tool is referred to as a “cohabitation” or “living together” agreement — a contract between unmarried partners defining the legal terms and conditions of their relationship. Except when children are involved, these legal terms and conditions are a matter of contract law rather than domestic relations law. Therefore, it is very important, especially in cases where property and debts are involved, for unmarried partners to seek and obtain legal advice and help in drafting a mutually satisfactory and enforceable cohabitation agreement.

### A. When did “cohabitation” or “living together” contracts become an enforceable legal tool for unmarried partners?

Before the 1970s, unmarried partners lived in a legal limbo. Under most state laws, money and property usually belonged to the person who earned the money and originally obtained ownership of the property. Contracts to share the parties’ earnings or property usually were not enforced by the courts on the basis that the agreements were illegal contracts trading sex outside of marriage for compensation. As a result, unmarried couples were unable to enforce their agreements to share or divide property or debts upon their marriage or death.

The law nationwide began to change in the mid-1970s, when the California Supreme Court ruled in the famous case of *Marvin v. Marvin* that unmarried couples had the right to make contracts to jointly own property or to support each other. Under the *Marvin* decision, a court could award an unmarried partner assets or financial support (“palimony”) if that person could prove a legal basis in contract or other general law for such a claim. Although other states have generally rejected the concept of “palimony” and have not followed the *Marvin* decision, the courts in nearly all states have concluded that unmarried couples are subject to the principles of contract law.

Therefore, contracts between people living together in an intimate sexual relationship are no longer illegal. But there is a significant caveat. If the contract is explicitly based on sexual services to be performed by one or both partners, the contract is still invalid as a matter of public policy. Therefore, such agreements should avoid any reference to performance of sexual services in the parties’ “living together” relationship. Moreover, it is often very difficult to prove the existence and terms of an oral contract. If one partner says there was an oral contract while the other partner denies it, a judge is unlikely to find that a contract exists, unless there are other witnesses or evidence that support the contract claim. Therefore, a cohabitation agreement should be in writing.

In some states the courts have recognized (and enforced) contracts that are implied from the circumstances of the parties’ relationship or their actions, for example, by jointly contributing to purchase expensive items or supporting a partner while living together. However, Ohio courts have generally rejected claims by unmarried partners based on an implied cohabitation contract. Several Ohio courts of appeals have ruled that cohabitation without benefit of marriage does not create an implied contractual relationship which can be the basis of a claim for damages for assets or financial resources expended during the nonmarital relationship. Further, the Ohio Supreme Court in *Williams v. Ormsby* held that

the concept of “palimony” is not recognized in Ohio law, and a division of assets or property based merely on the parties’ cohabitating relationship is not permitted.

The courts of some states have recognized that the legal doctrine of “unjust enrichment” applies to disputes between unmarried partners. Under the theory of unjust enrichment, if one person contributes something — such as labor — to make the other’s property more valuable, with the reasonable expectation of being paid or receiving something valuable in return, that expectation will be enforced by the courts. Ohio courts sometimes apply the doctrine of unjust enrichment to legal disputes between unmarried partners.

For example, an Ohio court of appeals has noted that “in any type of relationship, be it between friends, neighbors, business associates, or otherwise, there exists the possibility that one party may become unjustly enriched at the expense of the other.” Another court of appeals affirmed the trial court’s judgment for a plaintiff against her former partner on an unjust enrichment claim. In that case the plaintiff claimed that her male partner was unjustly enriched because she had taken out a mortgage loan during their cohabitation that was used for improvements to her partner’s home. The court of appeals held that he was unjustly enriched because, after his partner left the residence, he retained significant benefits from her investment, including the increased property value of his home and his continuing to live in the improved home.

On the other hand, Ohio courts have frequently rejected less compelling unjust enrichment claims. For instance, one court of appeals rejected the plaintiff’s unjust enrichment claim for reimbursement for improvements to her lesbian ex-partner’s residence. Following the termination of their relationship, the plaintiff received back the specific property she had expected to receive and, moreover, she had lived in her partner’s home for nine years during which time she enjoyed the benefits and improvements the parties jointly made to the residence. Similarly, another court of appeals rejected a female partner’s claim that her male partner was unjustly enriched during their cohabitation. He was not unjustly enriched by the plaintiff’s housework because he provided a similar benefit to her by allowing her to live in his house rent-free during their cohabitation.

These cases illustrate the potential problems involved in trying to win a lawsuit based on a claim of unjust enrichment against one’s partner or ex-partner. Unless there are large amounts of money at stake, it may not be worth the trouble to file an unjust enrichment suit. As noted, other claims such as those based on implied contract or the concept of “palimony” are even more likely to be rejected by the Ohio courts.

Therefore, the best way for unmarried couples to establish enforceable legal rights and to avoid serious legal problems after a breakup is to draft and sign a cohabitation or living together agreement. The agreement should be in writing and, if possible, should be written with the help of a lawyer to avoid future legal pitfalls. Although one or both unmarried partners in an intimate relationship may feel uncomfortable about discussing legal or economic issues with their romantic partner, it is important to address these issues during the parties’ relationship to avoid or minimize future conflict and possibly a court fight if the relationship ends.

## **B. What issues can be addressed in a living together or cohabitation agreement?**

It is important to spell out your financial and property arrangements in your agreement. Child custody, visitation, and related issues pertaining to the children of one or both of the parties may also be addressed in the agreement. (See Chapters 6 and 7 for a more detailed discussion of child custody, support and other “family law” issues.)

The agreement may cover a wide range of property and financial issues including, but not limited to:

- who owns what property;
- whether and how income and expenses will be shared;
- how new assets will be owned, including renting, buying or owning a home together;
- how bank accounts, credit cards, insurance policies, etc. will be managed;
- what happens to your property and debts if you break up or if one of you dies; and
- any other specific situations that may arise during and after the nonmarital relationship.

## **C. What are some key points to remember in writing a living together or cohabitation agreement?**

A sample agreement is in the Appendix of this manual (pp. 68-71). Legal experts<sup>1</sup> recommend the following tips to keep in mind when drafting your living together or cohabitation agreement:

1. Be willing to compromise and accommodate your partner’s concerns. One partner should not force an agreement on the other partner.
2. Don’t mention sex or the romantic nature of your relationship. A cohabitation agreement that is explicitly based on the performance of sexual services by one or both partners will be unenforceable. Any reference in the agreement to the fact that the two of you are having sex, or referring to one’s partner as a “lover” may render the agreement invalid and unenforceable.
3. To bind both parties in the contract, the promises you both make in the contract must meet the legal definition of “consideration.” This means that the promises must provide benefits to and impose obligations on both parties. Consideration should normally have a monetary value and could involve the promise to perform an act in exchange for something of value. For example, a bank agrees to loan money and the borrower agrees to pay it back. In the situation of unmarried partners, one partner could agree to pay the utilities for the home in exchange for living in the home, i.e., rent. The point of establishing this type of agreement is that it gives each party certain legal rights that are harder to prove when they are not in writing. An agreement based solely on one party’s promises of affection or loyalty in exchange for the other party’s promise of a

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<sup>1</sup> Warren, Ihara & Hertz, *Living Together: A Legal Guide for Unmarried Couples* 37-41 (15<sup>th</sup> ed. 2013).

tangible benefit will likely not hold up as a contract in court because the promise of affection or loyalty can't be measured as holding monetary value and can't serve as consideration for the contract. Courts call these sorts of promises "gratuitous."

The Ohio Supreme Court's 2012 decision in *Williams v. Ornsby* illustrates this point. In *Williams*, a boyfriend and girlfriend entered into a written agreement under which they agreed that the boyfriend's house would be transferred to both the boyfriend and girlfriend, and the boyfriend also promised to pay all expenses on the property, including taxes and insurance. They further agreed that if their relationship ended, the house would either be sold with both parties dividing the proceeds or with one party choosing not to sell the house and paying the other party for his or her share of the property. In return for these benefits, the girlfriend agreed to move in with her boyfriend and resume their romantic relationship.

The girlfriend later moved out of the house and the parties broke up. She sued her former boyfriend for breach of contract, and the former boyfriend argued that the contract was invalid for lack of "consideration." The Supreme Court found that the alleged "contract" made by the boyfriend amounted to a gratuitous promise to give his girlfriend an interest in his property based solely on her commitment of love and affection and the resumption of their romantic relationship. The promise of her love and affection and the recognition of their romantic relationship did not provide legal consideration for the formation of a valid contract.

Therefore, unmarried couples in Ohio must take special care in drafting cohabitation agreements to include specific mutual promises of benefits and obligations — especially regarding property and earnings — to establish valid consideration for the formation of a legally binding contract.

4. Don't include details of your personal relationship and day-to-day activities. A cohabitation agreement should cover matters relating to property, finances and, as appropriate, child custody and visitation matters. They should not detail ordinary personal or household activities, e.g., who will do the cooking or who will do other household chores.
5. Talk to a lawyer before signing an agreement if a lot of money or property is involved. (Chapter 10 of this manual gives tips on finding an attorney.)
6. You should also seek the advice of an attorney before signing an agreement if you feel that one partner has more business or legal knowledge or has more bargaining power in negotiating the agreement. For example, if one partner is an experienced businessperson, and the other partner has less education or experience in business matters, or is a recent immigrant with limited English proficiency, the businessperson could take advantage of the partner with less education and experience or a partner unaccustomed to legal contracts, particularly if it is written in English.
7. Consider including an agreement to mediate disputes that may arise after you and your partner sign your agreement. Mediation is a non-adversarial process where a neutral person — the mediator — helps you settle your differences. In addition to saving money and time, successful mediation may lay the ground work for future cooperation. This is especially important when a separating couple has children.

Mediation is often an effective method of dispute resolution and may be cheaper, faster, more effective, and less painful than going to court. A cohabitation agreement may include a general clause stating that you agree to have a third party mediate any dispute that may arise out of the agreement. Alternatively, you may agree to mediate only certain types of disputes such as issues involving shared custody of the children, but not agree to mediate other matters.

However, mediation is not always successful and is not always less expensive. It may enable someone with greater bargaining power to take advantage of their partner. That is especially true if the relationship involves domestic violence and the victim is easily intimidated by his or her abuser. Furthermore, when mediation is unsuccessful, the parties may still have to pay for the mediator and go to court and incur the additional time and expense of litigation.

**D. What options do you have when it comes to financial arrangements and ownership of property when living with your partner in a nonmarital relationship?**

There are many possible financial and property arrangements between unmarried partners. You should consider various options depending on your personal circumstances and the nature and duration of your relationship. Here are some of the possible options:

- You can keep the property that each of you owned before your agreement or you can share it, and you can transfer ownership of some or all of your property to you and your partner jointly.
- You can agree to split your income and expenses in different ways, for example, split up household expenses but keep your personal expenses and income separated.
- You can keep separate bank accounts, credit cards, and insurance policies or set up joint accounts, credit cards, and policies.
- You can agree to jointly purchase property and agree on how to dispose of the property if you separate. When you agree to jointly purchase property, but only one of you is the legal borrower or installment purchaser, the agreement may require the other partner to compensate the borrower in monthly payments or to make other payment arrangements.
  - Additionally, you can decide in advance who gets what property should you separate, or agree to a process (such as mediation) for resolving any disputes that come up if you separate. How you and your partner designate ownership of or transfer title to property during your cohabitation will also help determine what happens to your property when you separate.
- If one partner works outside the home and the other partner stays at home and performs homemaking services, the cohabitation agreement may require the partner who is working outside the home to compensate the stay-at-home partner for his or her housekeeping services. Or, alternatively, the income-earning partner may agree to pay the expenses of the stay-at-home partner in lieu of a weekly salary. If this is your agreement, you should consult with an attorney or tax advisor because of the potential tax consequences of different compensation arrangements.



- If one partner helps the other partner with educational expenses or financial support while the other partner is in school, you may want a written agreement to make clear that the person going to school will owe the supporting partner a certain amount of money or benefits. This arrangement can take the form of a promissory note from the student partner to the nonstudent partner for the money paid out (with interest) or other payment arrangements.

**E. Are there readily available sample forms for living together or cohabitation agreements?**

Yes. See the Appendix for a sample living together or cohabitation agreement. Many sample or fill-in-the-blank commercial forms are also available online.

Again, you should consult with an attorney before signing an agreement to ensure you fully understand the legal ramifications — because the agreement is a contract.

## Chapter 3 — Banking and Debt Issues

Unmarried couples face a wide range of legal issues — from the pros and cons of setting up joint bank accounts to buying or renting property after getting together. Addressing these issues early on during the couple's relationship may avoid more serious problems in the future. For example, when people live together, they must decide whether to pool their money or the property they buy with that money, or keep their money and property separate. Unmarried partners should clearly agree who will pay for the rent, installment car payments, utilities, groceries or other major expenses. It may be risky, however, for unmarried partners to combine most of their financial and other resources before they really know and trust each other.

### A. Are you legally responsible for your partner's debts?

Unlike marriage, living together as unmarried partners does not make you liable for your partner's debts. Your wages cannot be garnished and your property cannot be seized to pay for your partner's debts. Furthermore, your credit rating should not be negatively impacted by your partner's overdue bills or unpaid debts. You remain financially independent unless or until you and your partner agree to combine your assets or jointly incur certain debts.

Most commonly, unmarried partners lose their financial independence and become jointly liable for certain debts or other financial obligations when:

- They sign a joint purchase agreement.
- One partner cosigns a loan with the other partner obligating him or her to pay the debt of the person taking out the loan if that person fails to pay the debt.
- A partner's debt is charged to shared or joint bank or credit card accounts. Both partners have equal access to the account and are both liable for any bad checks or overdrafts on the account.
- The partners mix together their income and assets, making their property vulnerable to attachment or seizure for the other person's debts.

### B. What are your available legal options for placing your money in bank accounts, and what are the pros and cons of the various options?

The form of ownership of a bank account usually determines who has access to the funds in that account and who has access to the remaining funds upon an account owner's death. Under Ohio law, there are several commonly used types of ownership of bank checking, savings and money market accounts.

**Individual Accounts** — An individual account is in the sole name of one account owner, and the account owner is the only person who has access to those funds during his or her lifetime. Upon the account owner's death, the remaining funds in the bank account become

part of the account owner's probate estate<sup>2</sup> and will pass to that person's heirs or beneficiaries according to the terms of his or her will or, if there is no will, to the account owner's next of kin as determined by Ohio's inheritance laws in a probate court proceeding. Probate court proceedings can be time-consuming and expensive.

**Joint Accounts** — A joint account is an account in the name of more than one person. A joint account typically has "rights of survivorship." This means that upon the death of one of the joint owners, the remaining balance of the account passes directly to the surviving joint owner and is not subject to probate proceedings. If there are two joint owners, either joint owner may withdraw funds or write a check in the account at any time.

Joint bank accounts pose significant risks. If one of the joint owners is unreliable, he or she could withdraw most or all of the funds from the joint account for their personal benefit and to the detriment of the other joint owner. Additionally, both account holders are responsible for all activity involving the account and are legally liable for bounced checks and overdrafts. Nevertheless, the convenience of a joint account and the avoidance of probate may outweigh any risk of setting up and maintaining a joint account.

If you have a joint account with your partner and you notice that your partner is taking out too much money, go to your bank and ask that the account be switched to require two signatures for any withdrawals. Also, a savings account might be a safer option because many banks do not offer debit cards with savings accounts, and so this change might curb excessive spending. If your bank does offer debit cards with a savings account, ask the bank not to attach a card to your account.

You and your partner should also think about keeping records of who buys or pays for what. Having detailed records can help if a problem or dispute comes up.

**Payable-On-Death (POD) Accounts** — A payable-on-death (POD) account is an individual account during the account owner's lifetime, but it avoids probate upon the account owner's death. The account owner simply designates one (or more) beneficiaries (such as an unmarried partner) who is to receive the remaining balance of the account upon the account owner's death. The beneficiary of the POD account has no rights in the account until the account holder's death, and the account owner may change the named beneficiary or beneficiaries of the account at any time.

### **C. Are joint credit card accounts a good idea?**

As with joint bank accounts, there are pros and cons to establishing and maintaining joint credit card accounts for unmarried partners. Both persons on a joint credit card account are fully liable to the credit card lender for the full balance on the account, including any interest, late fees, or penalties. One account holder may incur a large credit card charge

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<sup>2</sup> "Probate" is a court process by which a will is proved valid or invalid or the deceased person's heirs are established if there is no will, and the probate process typically involves collecting the deceased person's assets, paying debts and necessary taxes, and then distributing property to the heirs or legal beneficiaries under the will.

without the other account holder even knowing about the debt until he or she sees the monthly credit card bill for the joint account.

However, that risk may be outweighed by the advantages and convenience of using a joint credit card. A joint credit card account may be used for household purchase and expenses or for major projects, such as paying for a vacation or home remodeling. It is usually easy to put two names on a credit card where at least one person is considered a good credit risk even when the other person does not have a good credit rating.

Unmarried partners may have a joint credit card account and also have individual credit cards. For example, they can use the joint credit card account for household purchases and use their individual credit cards for their sole personal expenses.

An alternative to a joint credit card account is an “authorized user account.” An individual account holder may add another person as an authorized user of his or her credit account. The authorized user gets his or her own credit card with that person’s name on it. However, the authorized user is not responsible for paying the bill. This arrangement may be beneficial to the unmarried couple if the authorized user has a poor credit history and would be unable to obtain an individual card. If a problem arises with the authorized user’s use of the card, the individual account holder can remove the authorized user from the account. The downside is that the individual account holder could be stuck with sole liability for a large amount of expenses charged by their less financially responsible partner.

**D. What should you do about your joint bank and credit card accounts if you and your partner break up?**

Close all of your joint bank and credit card accounts. Don’t just split up the credit cards between the two of you. You are both liable for all charges on your joint accounts, and you could end up having to pay for your partner’s post-breakup spending spree. Your credit rating will then suffer if the account becomes delinquent. Maintaining joint accounts after your separation is very risky.

## Chapter 4 — Buying a Home or Other Property Together

Many unmarried couples make purchases or investments together. They may also commingle their household goods and other personal property they already owned before getting together. Questions may arise as to who really owns what property, especially if the parties split up or one member of the couple dies.

### **A. What happens to property that was acquired before you and your partner started living together?**

Each person normally retains sole ownership of all property (TVs, computers, furniture, other household goods, clothing, etc.) he or she owned before living together as an unmarried couple. However, a cohabitation agreement may transfer ownership of some assets to joint ownership by the unmarried couples. For those items that will remain as separate property of each partner, it is a good idea for each partner to prepare a written list of his or her separate property. That should help avoid future confusion over who owns what household goods or personal property.

### **B. What happens to property acquired after getting together and living as an unmarried couple?**

An unmarried couple has the choice of either keeping their property separate or jointly acquiring and owning property. As an unmarried couple, it may be prudent to keep your property separate if you or your partner has serious debt problems or is not covered by adequate health insurance. Otherwise, it is fairly common for unmarried partners to pool their incomes and savings to purchase a car, furniture or other expensive items. Even if only one partner takes out a loan to finance the purchase or uses his or her separate funds to buy the item, both partners can be legal owners if they have a written agreement providing for joint ownership. In addition, ownership of certain property — such as cars or and recreational vehicles — must be registered on a certificate of title on file with the Ohio Bureau of Motor Vehicles (OBMV).

In other situations, one partner may lend the other partner money for a major purchase, such as a car, without intending to share ownership of the property. The partner borrowing the money for the purchase can sign a promissory note agreeing to repay the debt or make other payment arrangements.

### **C. Can my partner and I buy a house together?**

Yes, an unmarried couple can jointly purchase a house, but they must consider the following issues:

1. Finding and negotiating the purchase of the house;
2. Financing the purchase of the house;

3. Working out an ownership agreement between the unmarried partners; and
4. Acquiring a deed to the house.

Each of these steps requires careful consideration and planning.

**D. How do unmarried home buyers find and negotiate the purchase of a house?**

Most home buyers use a real estate broker — or an agent who works for a broker — to help find a house and negotiate the purchase. A broker or agent can also help obtain financing, assist with the closing, and recommend other experts, such as an appraiser or housing inspector. Real estate brokers or agents usually work on commissions — a percentage of the price of the home — and are paid by the seller. An individual broker may represent both the buyer and the seller, but this arrangement creates possible conflicts of interest.

To find a good real estate broker or agent, you can get recommendations from friends, coworkers, or other persons you trust. You should also check an agent's credentials and experience before you sign a contract with the agent. If you are an LGBT couple, try to find agents who are friendly to same-sex couples.

**E. Can banks or other mortgage lenders discriminate against unmarried couples?**

The Federal Equal Credit Opportunity Act (ECOA) prohibits banks and other mortgage lenders from discriminating against home buyers based on marital status. Ability to pay should be the determining factor. A mortgage lender that illegally discriminates based on marital status in deciding whether to approve a mortgage or regarding the mortgage terms is liable for up to \$10,000 plus any actual money damages resulting from the discrimination. Ohio law also prohibits credit discrimination based on marital status, i.e., whether the homebuyers are married or unmarried. In addition, the U.S. Department of Housing and Urban Development (HUD) prohibits LGBT discrimination on the grounds that it constitutes unlawful sex discrimination.

Under both federal and state law, the key consideration should be whether you and your partner are a good credit risk. However, the ECOA and Ohio anti-discrimination laws do not prohibit a mortgage lender from asking about the person's marital status if the inquiry is made to determine the lender's "rights and remedies applicable to a lender's particular extension of credit." Therefore, because Ohio property law gives a mortgage applicant's spouse a separate "dower" interest (partial right of inheritance) in the property, a mortgage lender can ask if the applicants are married.

**F. If unmarried homebuyers apply for a mortgage loan, must the lender consider both of their incomes and assets?**

Yes. A bank or other mortgage lender will compare your anticipated monthly payments (including principal, interest, taxes and insurance), plus your monthly payments on other long-term debts, to your total gross monthly income. This is your "debt-to-income ratio." Many lenders are wary of extending mortgage loans to applicants whose monthly debt

payments exceed a certain percentage of their gross monthly income. You may be able to qualify for a lower or higher percentage interest rate depending on the amount of your down payment, the interest rate on the mortgage, your credit history, your employment stability and prospects, and the type of mortgage loan.

If both of you are going to be homebuyers, both of your incomes will be considered in the lender's calculations. Applications by unmarried couples may be handled in two separate applications, but that should not affect your ability to get the loan.

You and your partner's credit scores are also important considerations. Credit scores are numerical calculations ranging between 350 and 800 that try to measure the risk that you will default on your mortgage payments. High credit scores indicate less risk and low credit scores indicate greater risk. Credit scores reflect various factors, including your debt payment history, the amounts you owe on credit accounts, the length of your credit history, the number and amount of your new credit accounts and debts, and the types of credit you have.

You can get a free credit report every year from the three major consumer reporting agencies (credit bureaus), but it may not include your credit scores. (The three major consumer reporting agencies are Equifax, Experian and TransUnion.) For more information on credit scoring or how to purchase or obtain your credit score, go to the Fair Isaac website for consumers at [www.myfaco.com](http://www.myfaco.com).

#### **G. What are the different types of mortgages?**

Many financial institutions make home loans, including banks, credit unions, insurance companies, and mortgage bankers. The two basic types of mortgages offered by these entities are fixed rate mortgages and adjustable rate mortgages. With a fixed rate mortgage, the interest rate and the amount you pay each month remain the same for the entire mortgage term, usually either 15 or 30 years. With an adjustable rate mortgage (ARM) the interest rate fluctuates according to current market interest rates. Interest rates on ARMs are usually offered initially at a discounted "teaser" rate lower than the current interest rate on a fixed rate mortgage. Over time, the initial discount ends and the interest rate adjusts according to current market rates plus an extra amount ("margin"). ARM mortgages may thus be more affordable in the beginning, but the borrower assumes the risk of higher interest rates and higher monthly payments in the future.

In addition to traditional private mortgage loans, there are government-subsidized mortgages, which have no or low down payments and flexible qualifying guidelines for low-and-moderate income homebuyers. Various federal, state and local government financing programs are available to homebuyers. The two main federal home loan programs are Federal Housing Administration (FHA) and Veterans Affairs (VA) loans. Under these programs, the FHA or the VA, insures or guarantees the private lender's mortgage loan. If you default, the FHA or VA will pay the insured or guaranteed amount to the mortgage lender.

The FHA considers the incomes of both unmarried partners when determining financial ability. However, VA loans discriminate against unmarried couples. If one member of an

unmarried couple is a qualifying veteran and the other is not, the VA will guarantee only the veteran's share, which means that the nonveteran partner will probably have to make a larger down payment. The VA treats married couples more favorably — a married veteran whose spouse is not a qualifying veteran can have the entire loan guaranteed and a smaller down payment will be required.

#### **H. Who should take title to a new home acquired by unmarried partners?**

When unmarried partners buy a house, they must decide whose names will be on the deed — i.e., who will own the property. Although there may sometimes be tax advantages to putting only one name on the deed, the risks inherent in putting the couple's house in one person's name usually outweigh the benefits. For example, if your partner is the only person named on the deed, you are probably out of luck if your partner sells the house and keeps the money. Although unmarried partners can sign a separate contract that spells out the property interests of both parties, such a contract is difficult, expensive and time-consuming to enforce because of the strong legal presumption that the person whose name appears on the deed is the legal owner.

#### **I. If both of our names are on the deed, what type of ownership do we have?**

It depends on whether under the deed you hold title as "joint tenants with a right of survivorship" or as "tenants in common." In both cases the persons whose names appear on the deed are co-owners, but the designation of joint tenancy or tenancy in common will determine their legal rights and what happens to the property when one of them dies.

If you take ownership as joint tenants with survivorship rights, you have equal ownership (50-50) of the property, and each of you has the right to use the entire property. When one joint tenant dies, the other automatically becomes the owner of the deceased co-owner's share, without having to go through the potentially expensive and time-consuming process of "probating" the deceased co-owner's estate.

The avoidance of probate is a major advantage of putting property in joint tenancy. However, there may be tax disadvantages to acquiring the property as joint tenants. If the partners' financial contributions are not equal, the equal ownership interest of the joint tenants mean that the greater contributor has made a gift to the lesser contributor and that gift must be reported to the IRS. Similarly, if one partner has owned the house for a period of time or made a large down payment when he or she purchased it, transferring it into joint tenancy can trigger a tax reporting obligation and/or tax liability.

The other way for unmarried couples to take title to a house or condominium is as "tenants in common." Tenants in common can own unequal shares — for example, one partner could own 70% and the other 30% of the property. Moreover, the surviving partner has no automatic right to inherit the property when the other partner dies. When one tenant in common dies, his or her share of the jointly owned property passes to the person specified in the deceased person's will or living trust or, if there is no will or living trust, it passes to the deceased person's heirs. A person's heirs include close relatives or other persons related by blood or marriage, but not your unmarried cohabiting partner.



If you and your partner initially take title to your home as tenants in common or as joint tenants with a right of survivorship, you can later change from one form of co-ownership to another form of co-ownership by signing and recording a new deed. For example, where you originally took title as tenants in common because one of you made a larger down payment, you can later change to a joint tenancy with a right of survivorship and thus avoid probate court by simply preparing and recording a new deed transferring the property to you and your partner as joint tenants with a right of survivorship.

**J. Can unmarried cohabiting partners set forth their rights and obligations with respect to the purchase of a home in a legally enforceable written contract?**

Yes. Any contract regarding a house or other real property must be in writing to be enforced. Some of the key issues that can be addressed in a living together or cohabitation agreement are: splitting costs; the effect of a breakup on homeownership; how to determine the market value of the house should one of you need to buy out the other; how you plan to resolve disputes; and what happens to the property if one of you dies. (A sample Cohabitation Agreement is included in the Appendix to this Manual.)

**K. Can unmarried cohabiting partners enter into a contract setting forth their rights and obligations when one partner moves into the other's house?**

Yes. When one partner moves in with another, issues of paying for expenses will arise. In some cases, the couple may decide that the person moving into the house should become a co-owner by paying the original owner one-half of the owner's equity — in a lump sum or in installments. In other situations, it may make sense for the title to the house to remain in one partner's name or for the new partner/co-owner to purchase a smaller co-ownership share as a tenant in common with the original owner. Again, the contract must be in writing.

## Chapter 5 — Renting and Sharing a Rental Home

### A. Can a landlord discriminate against unmarried couples?

Some landlords refuse to rent to unmarried couples. They may refuse to rent to you based on their religious beliefs about marriage. Others may believe that unmarried couples are less stable or financially responsible. Federal and Ohio fair housing (housing discrimination) laws prohibit discrimination on the basis of your race or color, religion, national origin, gender, familial status, or physical or mental disability. Ohio law also prohibits discrimination based on military status (veterans). Neither federal nor Ohio fair housing laws prohibit rental discrimination based on marital status, sexual orientation, or gender identity. Ohio is one of 28 states that lack any statutory nondiscrimination protections for LGBT people. However, some municipal laws in Ohio prohibit discrimination based on sexual orientation or marital status. These include the major cities of Cincinnati, Columbus and Cleveland. For up-to-date information on housing discrimination laws in your area, check your local ordinances, call your local city or county attorney's office, or visit [www.equalityohio.org](http://www.equalityohio.org).

Tenants or applicants for public housing or other HUD-subsidized housing are entitled to greater legal protections than in the private housing market. On March 5, 2012, the U.S. Department of Housing and Urban Development (HUD) adopted an Equal Access Rule to prohibit marital status and LGBT discrimination in HUD-assisted or HUD-insured housing. HUD's Equal Access Rule includes provisions that:

- require entities assisted by HUD or insured by the FHA to make housing available without regard to actual or perceived sexual orientation, gender identity, or marital status;
- clarify that the definitions of “family” and “household,” which identify who is eligible for HUD's core programs, includes persons regardless of actual or perceived sexual orientation, gender identity, or marital status;
- prohibit HUD-assisted or HUD-insured entities from inquiring about an applicant's or occupant's sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available.

In January 2015, HUD incorporated the Equal Access Rule into its general program requirements for all of its “core” housing programs. HUD's core rental programs include public housing, Section 8 voucher, Section 8 project-based housing, Section 221(d)(3) and Section 236 housing, and Section 202 elder and disabled housing. These programs serve tenants with low or moderate incomes.

Violations of the Equal Access Rule could result in HUD's determination that the owner or landlord has failed to comply with program requirements. HUD may pursue any available remedy, including financial sanctions, that it determines appropriate to remedy the violation.

If you believe you have experienced housing discrimination in private, HUD-subsidized, or public housing, contact HUD's Office of Fair Housing and Equal Opportunity for help

at (800) 669-9777. If you want to file a housing discrimination complaint online, visit [https://portal.hud.gov/hudportal/HUD?src=/topics/housing\\_discrimination](https://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination). HUD will investigate your complaint to determine the validity of your allegations under the Fair Housing Act and the Equal Access Rule. You can also file a housing discrimination charge with the Ohio Civil Rights Commission. For more information, go to [www.crc.ohio.gov](http://www.crc.ohio.gov).

**B. Can lease provisions restrict or otherwise impact unmarried couples in Ohio?**

Unmarried couples should look out for any clause prohibiting “immoral behavior” or similar language. Check to see if your local ordinances prohibit marital status discrimination and thereby invalidate such clauses. You should also look out for any clauses that give your landlord unreasonable access to the rental unit. Under Ohio law, a landlord, except in an emergency, must give a tenant reasonable notice — usually 24 hours in advance — of entering the unit to inspect conditions or make repairs. More intrusive inspection clauses in a residential lease would violate Ohio law and be unenforceable.

Unmarried partners who rent and share a house or apartment are usually cotenants. Each cotenant is liable to the landlord for all the rent. In legal terms, the cotenants are “jointly and severally liable” for paying rent and for complying with other terms of the lease or rental agreement. If your partner-cotenant moves out, or cannot pay their share of the rent, then you must pay the full rent. Cotenants may also be subject to eviction because of the actions of another cotenant. For example, you can be evicted if your partner-cotenant seriously damages the property or moves in a pet, contrary to the landlord’s no-pets rule.

**C. What are your options if you want your partner to move into your rental unit after you have already entered into a lease or rental agreement between you and your landlord?**

You should request advance approval from your landlord to add your partner as a roommate. Your landlord will probably ask both you and your partner to sign a new lease or rental agreement. This makes it clear that you and your partner share the same legal rights and responsibilities including the duty to pay the full rent. If your landlord refuses to put your partner on the lease, you may have the option of subletting the unit to your partner. But your landlord may also prohibit subleases.

**D. What obligations do partner-cotenants owe to each other?**

Cotenants should clearly define their responsibilities and obligations to each other. To avoid future problems, write down your arrangement when you first move in together — including how to handle the security deposit, who pays what portion of the rent and utility bills, and who gets the apartment if you split up. If your landlord agrees to add your partner as an additional cotenant on the lease or rental agreement, the landlord may then raise your rent. By having the two of you sign a new lease that creates a co-tenancy, the landlord can increase the rent immediately, rather than giving you the usual 30 days’ notice for a month-to-month tenancy or waiting until your one-year lease term expires.

**E. How can one or both of you recover your security deposit?**

If you and your partner sign a lease together and only one of you moves out, your landlord does not have to return any portion of the security deposit. You and your partner may, if you so choose, or if you have a prior agreement between the two of you, pay the partner who remains in the rental unit half of the deposit when the other partner moves out. But your landlord has no obligation to return the deposit so long as one of you is still living in the rental unit.

**F. Who can I contact if I have legal questions regarding my or my partner's rights regarding rental housing?**

If you are low-income, you may be eligible for legal assistance from your local legal aid program. Call (866) LAW-OHIO (866-529-6446) for a referral or go to [www.ohiolegalhelp.org](http://www.ohiolegalhelp.org) to find your nearest legal aid office. You can also contact the Lawyer Referral Service through your local bar association for referrals to local attorneys.

## Chapter 6 — Paternity, Birth Certificates, and Adoption of Children

Many unmarried couples have children. They may have adopted children, or paternity issues may arise during or after the parties' cohabitation. Unmarried partners may already have children before they decide to cohabit, or they may decide to have and raise a child during their relationship. Many legal issues — including paternity, adoption law, inheritance rights, and public benefits eligibility — may arise when there are children involved.

### **A. When a child is born to me and my partner, what name goes on the child's birth certificate?**

Ohio law prescribes the procedure for naming a child and filing a birth certificate. When a child is born in or on the way to the hospital, a hospital representative (usually a social worker) meets with the new mother shortly after the birth and obtains the necessary personal data including the child's name. The hospital must then file the birth certificate with the local registrar of vital statistics within ten days after the birth of the child. When a child is born outside of a hospital, the birth certificate may be prepared and filed by the attending physician, a biological parent, the person in charge of the facility where the birth occurred, or any other person in attendance at or immediately after the birth.

If the mother is not married at the time of the child's conception or birth, or between conception and birth, the mother shall name the child. She may choose any surname and doesn't have to give the baby the last name of any parent. However, she can only list a father's name on the birth certificate if a court has declared the man to be the child's father or she and the father have signed and filed a voluntary acknowledgement of paternity. (See discussion in section C below.) The current practice regarding same-sex couples is more complicated. After a same sex couple gets married, the other spouse may be listed as a 'parent' on the birth certificate. However, the partner in a same-sex unmarried couple cannot be listed as the other parent, and transgender parents cannot change their gender on their child's birth certificate (or their own birth certificate) if the child (or parent) was not born in Ohio.

### **B. Why is it important to establish paternity of a child?**

Establishing paternity as soon as possible after a child is born protects both the parents and the child. It helps ensure that the child will be eligible to receive benefits through the father, including welfare cash assistance (Ohio Works First or "OWF"), health insurance coverage, Social Security, survivors or disability benefits, and life insurance benefits. It enhances the father's chance of obtaining custody or visitation rights, or the mother's chances of obtaining child support, if the parents are separated. The child's and the father's inheritance rights from each other will also depend upon a determination of paternity.

### **C. How can paternity be established in Ohio?**

If a child is born during a marriage or within 300 days after the date of a marriage, the husband is legally presumed to be the father of the child. This marital presumption of

paternity can be overcome by DNA testing results proving the husband's nonpaternity. Otherwise, paternity of a child may be established in one of three ways if such action is taken before the child's 23<sup>rd</sup> birthday.

First, the mother, the man claimed to be the father (the "putative" father), or the child may bring a civil action (lawsuit) for paternity in juvenile court if they are also requesting custody, child support, or payment of the expenses of the mother's pregnancy and confinement. The juvenile court must expedite the case and issue a court order determining paternity within 180 days after the filing of the lawsuit. The court will usually order DNA testing and determine paternity based on DNA test results, but when such evidence is unavailable, the court may consider testimony and other relevant evidence — such as, evidence concerning the mother's sexual partners, incidents of sexual intercourse around the time of conception, and verbal admissions of paternity.

Second, either the mother or the putative father may request an administrative determination of paternity by the county Child Support Enforcement Agency (CSEA). After receiving a request for an administrative determination of paternity, the county CSEA will order DNA testing of the child, the mother, and the putative father. The CSEA will issue an administrative order determining the man to be the father of the child if the DNA test results establish a 99% or greater probability that he is the biological father. Otherwise, the CSEA will issue an administrative order saying that paternity cannot be determined.

Third, the mother and the putative father may execute a voluntary acknowledgment of paternity affidavit. The "Acknowledgment of Paternity Affidavit" (JFS Form 07038) must be signed by both parents, notarized, and filed with the paternity registry at the Ohio Department of Job and Family Services. The form is usually given to parents at the hospital at birth, but can also be completed and signed at the local registrar of vital statistics, health department or county CSEA. By signing the form before a notary public, both people agree that they are the biological parents of the child.

Ohio law no longer uses the words "legitimate" and "illegitimate" in differentiating between children whose parents are married and children whose parents are not married. Under the Ohio paternity statute, "the parent and child relationship extends equally to every child and to every parent." Furthermore, it does not make any difference whether a child is "legitimate" or "illegitimate" for purpose of receiving Social Security benefits, other government assistance, or life insurance benefits.

**D. If a paternity affidavit or order determining paternity is mistaken, what can be done to change the earlier paternity determination?**

There are several ways to overturn an earlier paternity affidavit or a judicial or administrative agency finding of paternity. First, either person who signed the paternity affidavit may rescind (cancel) it by simply requesting a CSEA administrative determination of paternity within 60 days after the date of the latest signature on the affidavit. Second, either person who signed the affidavit may bring an action (lawsuit) in juvenile court to rescind the affidavit on the basis of fraud, abuse, or mistake of fact. Such an action must

be brought within one year after the affidavit was signed and filed with the paternity registry.

Finally, the man who was determined to be the father by the execution of a paternity affidavit, or the issuance of an administrative or court order of paternity, may file a motion or complaint in the juvenile court or court of common pleas to set aside the earlier paternity affidavit or determination on the basis that DNA testing results now show a zero percent probability of paternity.

**E. Can an unmarried couple or an individual unmarried partner adopt a child?**

Under Ohio law, an “unmarried adult” may adopt a child. And same-sex, married couples may adopt a child as a result of the United States Supreme Court’s *Obergefell* decision. However, there is no provision in Ohio law for an unmarried couple to jointly adopt a child. In addition, adoption agencies may be biased against unmarried adults who are living with another adult in a nonmarital relationship.

**F. Can you adopt your partner’s child?**

When a parent marries someone other than his or her child’s other parent, the non-parent spouse may pursue a stepparent adoption. However, current Ohio law does not authorize the nonparent in an unmarried couple to pursue a stepparent adoption. Several states now allow the nonparent in an unmarried couple to pursue a so-called “second-parent” adoption. But second-parent adoption may not be an option in Ohio because it is not specifically permitted under the Ohio adoption statutes. There are other legal options in Ohio for the nonparent to obtain legally enforceable rights to shared custody or visitation. For example, the Ohio Supreme Court has recognized a valid shared-parenting agreement between a parent and “nonparent.”

**G. What are the legal consequences of adoption?**

Adoption is a legal proceeding by which an adult becomes the legal parent of someone who is not his or her biological child. Adoption creates a parent-child relationship with all the legal rights and responsibilities of a biological parent — including child custody, the duty to support the child, inheritance rights between the parent and the child, public benefits for the child, and the right of consent to the child’s medical care, school placement, marriage or future adoption while the child is a minor.

## Chapter 7 — Unmarried Couples and Family Law

Many relationships — both marital and nonmarital — do not last forever. In Ohio, married partners can terminate their marriage by obtaining a divorce or a dissolution of marriage. Spouses can also seek and obtain a court order of legal separation which — while not terminating the marriage — may resolve issues of property distribution, spousal and child support, and child custody and visitation. However, those legal remedies and procedures are not available to unmarried couples who split up. Different and less clearly defined legal remedies and procedures apply to the separation of unmarried couples.

On the one hand, if you and your ex-partner can agree on how to divide up your assets and there are no children of the relationship, you may be able to avoid going to court and incurring significant legal expenses. If there are children of the relationship but you and your ex-partner can agree to everything else, you may still have to go to court to resolve issues of child custody, visitation and child support. It is worth narrowing the issues that will be resolved by the court to the extent that you can, such as property distribution and debts.

On the other hand, if you do end up in court because you are unable to work out these issues with your ex-partner, the legal process may be more difficult and uncertain than the well-defined legal procedures and remedies available in a divorce action.

### A. What will happen to our property when my partner and I break up?

If there is a cohabitation or living together agreement, you can enforce the agreement and, if necessary, bring a breach of contract lawsuit. With respect to real property, you can bring a partition action in a Common Pleas Court. A partition action divides the property equally between the two parties, or the court orders the property sold and the proceeds divided equally between the parties. In any case, you should secure your financial records and personal property:

1. **Organize financial documents and records.** Find your important joint financial documents, make copies, and put them in a safe place. This includes joint bank accounts, property deeds, business records, insurance policies, credit card information, tax returns, and title certificates for cars, investment records, promissory notes, and wills.
2. **Protect physical assets.** If you have important personal property, keep it in a safe place. If you are afraid that your partner might try to sell it or take it with them, keep it somewhere that your partner can't find.

### B. What are the key legal terms in Ohio regarding child custody and visitation issues?

Words that you may hear or see in a court order:

- **Allocation of parental rights and responsibilities** - a legal determination of who gets legal and physical custody of the child and the division of parenting time between the child's legal custodian and the other parent.



- **Residential parent** - the parent who is the legal custodian of the child and with whom the child lives for the purposes of obtaining public benefits and determining school attendance; the child usually spends more time during the week with the residential parent.
- **Non-residential parent** - the parent who is not the residential parent, usually the parent who has less time during the week with the child.
- **Shared custody/co-custody** - A parent and a nonparent may agree to shared custody/co-custody by signing a shared custody/co-custody agreement and filing it with the court.
- **Visitation/Companionship** - a non-parent's time to have physical possession of the child.
- **Parenting time** - the days/times that a parent has the right to have physical possession of the child.
- **Child support obligor** - the parent responsible for paying child support.
- **Child support obligee** - the parent receiving child support.
- **Shared Parenting** - "Shared parenting" is where the parents both share decision-making for the children, but it does not necessarily mean that the child spends an equal amount of time with each parent. Decisions include where the child will attend school, whether to apply for government benefits, approving school and other extracurricular activities, asking a school for special education services, raising the child in a specific religion, consenting to medical care for the child, and other matters concerning the care and discipline of the child. Some shared parenting plans may give both parents equal authority over certain matters while making one parent primarily responsible for other matters. Parents under a court ordered shared parenting plan are expected to talk to each other and make joint major decisions about the child.

**C. If the biological parents are unmarried, is the mother automatically deemed the legal custodian of the child in the absence of a court order?**

When parents of a minor child are unmarried, the mother is deemed the sole residential parent and legal custodian of the child until a court issues a custody order. The father must file a lawsuit to get rights to see the child. Child support can be ordered without granting the father any custody or visitation rights. A juvenile court has jurisdiction in Ohio to hear and decide child custody cases between unmarried parents, or between a parent and a nonparent (such as a grandparent or other relative).

**D. What is the legal test used by Ohio courts to determine custody disputes between the parents?**

When a court decides a custody case, it must determine, "What is in the best interest of the child?" The primary focus is on the child's best interest, not on what the parents want or how the parents have treated each other. The court must decide whether it would be in the

child's best interest to be placed with one parent or the other, or whether a shared parenting arrangement would be in the child's best interest. The court must consider all of the statutory best interest factors and other relevant factors in deciding the allocation of parental rights and responsibilities. The court must weigh any conflicting factors in light of the evidence, and decide what is in the child's best interest based on all the facts and circumstances in the case.

The statutory best factors listed in Ohio Revised Code Section 3109.04(F) include:

- the parents' wishes;
- the child's wishes;
- the child's interaction and interrelationship with parents, siblings and other who significantly affect the child;
- the child's adjustment to home, school and community;
- the mental and physical health of all parties concerned;
- which parent will promote court-ordered time between the child and other parent;
- whether a parent has made court-ordered child support payments;
- whether a parent has been convicted of or plead guilty to abuse, neglect or domestic violence;
- whether a parent has purposely denied the other parent court-ordered time with the child;
- whether a parent has moved or plans to move from the state;
- whether a parent has been convicted of a crime that resulted in harm to another family member;
- *when seeking shared parenting*, how close the parents live to each other;
- *when seeking shared parenting*, the ability of the parents to cooperate and make joint decisions;
- *when seeking shared parenting*, any history of domestic violence, child abuse or parental kidnapping by either parent.

The court may also consider other factors, including whether one parent has been the child's "primary caregiver," taking care of most of the child-raising responsibilities such as feeding, toilet training, disciplining, teaching, watching over, and playing with the child. A parent's "immoral" or bad conduct is relevant if it directly harmed or may harm the child. For example, alcohol or drug problems may be relevant to the court when deciding custody matters. If you have a history of substance abuse, it is important that you present evidence to the court that you have been receiving treatment and are no longer drinking or using drugs. Note that the court cannot give preference to a parent/relative just because that person has more money or financial resources.

The court may interview a child in the judge's private chambers to determine the child's wishes and concerns. This is called an *in camera* interview. This is usually done without the presence of the parents or their attorneys. The court must talk to a child in chambers if a parent asks the court to do so and the court determines the child has sufficient reasonability to express his or her wishes and concerns. The judge or magistrate must consider the child's wishes and concerns in making a best interest determination, but the child's wishes and concerns are only one factor the court must weight along with all the other factors. Although the judge or magistrate may interview the child in chambers, they may not consider any written or recorded statement from the child about where he or she wants to live. In fact, it is against the law for anyone to try to obtain such a statement from a child.

**E. In the absence of a shared custody or co-custody agreement, what is the legal test used by courts in Ohio to decide custody disputes between a parent and a nonparent?**

Where one partner in an unmarried couple has a child from another relationship, the nonparent may still play a significant role in raising the child. If the biological parents already have a custody and parenting time (visitation) order from their prior relationship, that order and any later modifications will determine the child's custody arrangements. However, if there is no prior custody order and the other biological parent has abandoned the child or has little or no role in raising the child, the nonparent in the nonmarital relationship may have standing to seek custody of the child after the unmarried partners split up.

A straight "best interest of the child" test applies to initial custody disputes between parents. A different legal test is applied to custody disputes between a parent and a nonparent in Ohio. A court must first determine that the parent is "unsuitable" before it can apply the best interest of the child test and award custody to the nonparent. The nonparent seeking legal custody has the burden of proof of parental unsuitability.

A parent is "unsuitable" if the evidence shows that the parent abandoned the child, the parent relinquished custody of the child, the parent has become totally incapable of supporting or caring for the child, or an award of custody to the parent would be "detrimental" to the child. This "parental unsuitability" test creates a significant legal hurdle for the nonparent ex-partner in an unmarried relationship to overcome when seeking custody of his or her former partner's child (in the absence of a shared custody or co-custody agreement between the unmarried partners).

**F. Can unmarried partners including a biological parent and a nonparent enter into a legally enforceable shared custody or co-custody agreement?**

In Ohio, “shared custody” or “co-custody” agreements (terms used interchangeably in Ohio) are used to establish legal rights and responsibilities for the non-biological parent in nonmarital relationships. This tool is most often used by same-sex couples who have decided to start a family together — e.g., those situations involving donor insemination by the biological parent and/or a surrogacy contract — or where one parent has a child from a previous relationship. But shared custody or co-custody agreements can also be used by different-sex couples.

A shared custody or co-custody agreement usually provides that if the birth mother dies, or if the parties separate, the non-biological parent will have specific custodial or visitation rights and responsibilities and will have standing to enforce those rights under the agreement. Ohio courts usually will enforce these agreements and thereby honor the continuing relationship between the non-biological parent and the child after the termination of the unmarried partners’ relationship.

Ohio courts may enforce a shared custody or co-custody agreement if it is in the best interest of the child. The agreement must show that the biological parent “purposely relinquished” the right to exclusive custody by making an express agreement to that effect with his or her partner. The agreement should include language showing that you want to share custody — to raise the child together, make decisions together, and enumerating the key decisions that you must make together such as schooling, religion, where to live, etc. While these agreements are designed to ensure a continuing relationship between the non-biological parent and the child, a biological parent in a relationship with an abusive partner may want to avoid signing a shared custody or co-custody agreement to avoid creating custody rights for the abuser.

**G. What can I do if I have already obtained a custody order or the juvenile court has already approved our shared custody or co-custody agreement, and I now want to change the custody arrangement? What is the legal test for a modification of an existing custody order?**

A court cannot change custody unless there has been a “change in circumstances” for the custodial/residential parent or the child that has occurred since the date of the last court order. The court must also find that a change in custody is necessary for the best interest of the child. The changed circumstances must relate to the child, the residential parent, or either of the parents if there is a shared parenting arrangement. The changed circumstances of the nonresidential parent should not matter. For example, if the nonresidential parent gets a better job or completes substance abuse treatment, that change in the nonresidential parent’s circumstances probably will not constitute a change of circumstances for custody modification purposes.

Moreover, the court cannot change the child's residence unless one of the following applies:

- Both parents agree to a change;
- The child has become integrated into the home of the parent seeking the change (when the child, with permission of the residential parent, spends more and more time at the home of the parent seeking the change); or
- The harm likely to be caused by a change of environment is outweighed by its benefits. The law recognizes the importance of stability for a child and of the potential harm to the child if there is a disruptive change of custody.

It is not easy to change custody or the specific terms of a shared parenting order. So, do your best to get an order that you can live with in the beginning.

There is one notable exception to this strict legal test for modification of custody. Either parent subject to a shared parenting order may move to terminate a shared parenting order on the basis that the order is not in the best interest of the children, and the court may then terminate the shared parenting arrangement without a finding of a change of circumstances.

#### **H. What is the legal test in Ohio for determining visitation rights and parenting times?**

In Ohio, the terms "visitation," "companionship," and "parenting time" mean the same thing. In custody disputes between parents, Ohio courts award "parenting time" to the noncustodial parent. But in custody disputes between a parent and a nonparent, the court awards "visitation" or "companionship" to the nonparent.

The court must apply a "best interest of the child" test in determining parenting time or visitation rights. Every domestic relations and juvenile court in Ohio has a "standard parenting time schedule." Courts may order a different parenting time schedule if it would not be in the child's best interest, or if the parties agree to a different schedule.

The statutory "best interest" factors that must be considered by the court in determining parenting time or visitation rights are very similar to the "best interest" factors used to determine custody. But there are several additional factors. Notably, the court must consider the wishes and concerns of the child's parents in a visitation dispute between a parent and a nonparent. For example, in a visitation dispute between a biological parent in a nonmarital relationship and his or her former partner, the court must consider the biological parent's objections to visitation and weigh those objections against the other "best interest" visitation factors.

When the unmarried partners of the child are the child's parents and a court designates one parent as the residential parent, it typically awards parenting time (visitation rights) to the other parent. Indeed, the court must "ensure the opportunity for both parents to have frequent and continuing contact with the child" unless doing so "would not be in the best interests of the child." If the court decides it would not be in the best interest of a child for

the non-residential parent to have parenting time, the court must make specific “findings of fact and conclusions of law” explaining its decision.

**I. If there has been domestic violence, child abuse or neglect, can the courts still award parenting time or visitation rights to the perpetrator?**

Yes. The court may still award parenting time or visitation/companionship rights to a perpetrator of domestic violence or child abuse/neglect. Sometimes the court will deny any parenting time or visitation rights to the abusive partner in cases where there has been a serious history of abuse. But it is more likely that the court will order certain conditions or restrictions to protect the child while still allowing limited contact between the child and the nonresidential parent or non-biological parent.

In domestic violence cases, the court *may* order:

- exchanges of a child to occur in a protected setting;
- parenting time or visitation supervised by another person or agency and for the abuser to pay the fees for it;
- no overnight parenting time or visitation;
- the abuser to complete a batterer’s intervention (treatment) program or counseling as a condition of the parenting time or visitation;
- the abuser cannot possess or consume alcohol or drugs during or 24 hours before the parenting time or visitation;
- a bond from the abuser to ensure the return and safety of the child;
- that the address of the child and the victim be kept confidential; and/or,
- any other condition that is necessary to provide for the safety of the child, the victim of domestic violence, or any other family or household member.

The court will not automatically restrict the abuser’s parenting time or visitation rights or limit him or her to supervised parenting time or visitation. It will only do so in cases where there is evidence of harm or danger to the child, and even then, any restrictions may be temporary. But courts do often order that the exchange of the child take place at a safe/neutral site, such as a supervised visitation center, a police station lobby, a public place (like a store or a restaurant lobby), or a relative’s home to protect the domestic violence victim and ensure a safe exchange of the child.

**J. Can I obtain child support from my ex-partner?**

Yes, if your ex-partner is the parent of your child. A court or a county Child Support Enforcement Agency (CSEA) will order child support only when the parents are separated or the child is in the care of a third-party custodian. Even if the parents agree to a child support order, it must be approved by the court or CSEA. When the court or CSEA makes a child support order, it must: (1) establish the paternity of the father if that is an issue; (2)

establish a child support order; (3) enforce the child support order if necessary; and (4) when requested and appropriate, modify the child support order.

**K. What can I do if my ex-partner is the child’s biological partner but denies the paternity of the child?**

You will have to establish your ex-partner’s paternity before obtaining a child support order.

Paternity — a legal decision that a man is the father of a child — can be established in several ways: the execution of a voluntary acknowledgment of paternity affidavit, the issuance of a CSEA administrative paternity order, or a court order establishing paternity. Paternity can be established at any time before the child’s 23<sup>rd</sup> birthday regardless of where the parent lives.

If there is no voluntary acknowledgment of paternity affidavit, you can either file a paternity suit in juvenile court or ask the county CSEA to do an administrative determination of paternity. If there is doubt about who the father is, the court or the CSEA will order all parties (including the child) to submit to DNA testing and will issue a paternity order based on the results. The CSEA administrative process is easier, quicker, less expensive (usually free), and does not require either parent to have an attorney. *See the more extensive discussion of paternity in Chapter 6 of this manual.*

**L. How do I obtain a child support order?**

Both parents have a legal responsibility to support their children financially. A child support order sets the amount and frequency of child support payments that parents are required to make. Either a court — a juvenile court or domestic relations court — or a county Child Support Enforcement Agency (CSEA) can issue a child support order. If there is a pending divorce, dissolution of marriage, or legal separation case, the domestic relations court will determine child support and may issue a temporary child support order during the pendency of the proceeding. A juvenile court may order child support in any child custody proceeding or in an action brought by a parent seeking child support only. Otherwise, the county CSEA usually takes the lead by administratively establishing a child support order. The CSEA can seek a child support order even where the other parent does not live in Ohio.

The person who is ordered to pay child support is called the “obligor” (usually the non-residential parent). The person who receives child support under the order is called the “obligee” (usually the residential or custodial parent). In “shared parenting” cases one of the parents is designated the residential parent/obligee for child support purposes.

The child support schedule and applicable worksheet of the Ohio Child Support Guidelines are used to calculate the amount of child support. Child support is based on the incomes of both parties and the cost of health insurance and daycare (for just the children of the relationship). Child support calculations are complicated — the courts, CSEAs, and

attorneys often use computer programs to determine the “guideline” amounts. If you have to do the numbers, check your local court for a computer with a child support program on it, or go to <https://ohiochildsupportcalculator.ohio.gov/home.html>. In general, courts are required to issue a minimum child support order of at least \$50 per month regardless of the parties’ incomes or financial circumstances. However, courts can order a lesser amount or order no support at all if the obligor is institutionalized, has a documented physical or mental disability, or under other “appropriate circumstances.”

If the child is receiving Social Security or veterans’ benefits as a dependent of the obligor, that amount must be deducted from the calculated amount of child support. In some cases, that will mean that child support amount will be zero because the child’s dependency benefits exceed the amount of support ordered by the court or CSEA.

If a parent’s job has changed or he/she has no income at all, a court or CSEA can “impute” income to a parent who is voluntarily unemployed or underemployed — meaning they assume that the parent could be making a certain amount of money and issue orders based on that potential income. This can be done if you can prove that a parent is voluntarily underemployed (making less than he or she is able to) or unemployed.

When child support is ordered, the court or CSEA will also order that the obligor’s employer take the child support right out of the obligor’s paycheck or automatically withdraw it from his or her bank account.

However, low-income means-tested benefits such as Supplemental Security Income (SSI), Ohio Works First (OWF), or veteran’s pension benefits are not subject to deductions for child support. Even if there is no income withholding or deduction notice, child support payments must be paid to either the State Office of Child Support or the county CSEA.

Support payments must go through the appropriate state or county agency. Failure to do this can trigger unfortunate consequences for the obligor. Under Ohio law any monies sent from one parent to another or to the custodian of the child without going through the State Office of Child Support or the CSEA is legally deemed to be a “gift” and will not count as child support payments under the child support order.

**M. Can I also obtain health insurance coverage or other medical support for our children from my ex-partner?**

The court or county CSEA will order one or both parents to provide health insurance coverage for the children, if such coverage is available at a “reasonable cost” (equal to or less than 5% of the parent’s gross income.)

State law also requires any child support order to take into account medical support for the children in one of two different ways:

- The child support order must be adjusted to take into account the cost of health insurance for the children when insurance is carried or is available at a reasonable cost for the children.



- If reasonably affordable health insurance is not available to either parent or if a parent does not comply with a health insurance order, the court or CSEA will order the obligor to pay “cash medical support” in addition to regular child support.

The purpose of a cash medical support order is to provide money for the uncovered healthcare costs of a child, whether paid for by the other parent, another person, or Medicaid, and discharged only when private health insurance coverage is not being provided for the children. When the children are on Medicaid, the obligor pays cash medical support to the State of Ohio. When the children are not covered by Medicaid, the obligor pays cash medical support to the obligee. The amount of cash medical support is calculated at 5% of the obligor’s “adjusted gross income.” However, indigent obligors (adjusted gross income is less than 150% of the federal poverty level for a one-person household) cannot be ordered to pay cash medical support.

Children may be covered by both Medicaid and private health insurance. Even if the other party has private health insurance and is going to cover your children on the policy, you can keep your Medicaid card as your secondary insurance (This can help with deductibles or co-pays.)

**N. If I obtain a child support order against my ex-partner, and he or she is not making the required child support payments, what can I do?**

You can file a motion for contempt against your ex-partner. You can also turn for help to your county Child Support Enforcement Agency (CSEA). The CSEA is responsible for enforcing child support orders. In fact, the CSEA should automatically take action to enforce your child support order whenever the order is in “default.”

When the obligor is more than one month behind, he or she is in “default.” The CSEA is responsible for enforcing child support orders at no charge. Child support orders can be enforced across state lines. The CSEA can enforce child support orders and collect arrears by:

- issuing new income withholding or deduction notices to collect the arrearage;
- issuing a seek work order (and order to find a job) against the obligor;
- taking the obligor’s tax refund(s) and using it to pay off the arrearage;
- locating the obligor’s bank account and then taking the money to pay the child support obligation;
- suspending the obligor’s work or professional license, or driver’s license;
- having the prosecutor charge the obligor for criminal nonsupport, which can be either a misdemeanor or a felony depending on how long the obligor has been in default; and/or
- filing a motion for contempt against the delinquent obligor (a commonly used enforcement tool) and asking the court to find and/or jail the obligor (inability to pay is a valid defense to a contempt motion).

**O. Can either party to a child support order try to change the order if they or their ex-partner's circumstances change?**

Yes. A court or CSEA may modify an existing child support order upon the request of either the obligor or the obligee. The amount of child support may be changed when there is a "substantial change of circumstances." Either parent may request a change by filing a motion in court to modify child support or by requesting a CSEA administrative review. It is easier to request a CSEA administrative review because you do not need an attorney and it is free. Either the obligor or the obligee may request a CSEA administrative review once every 36 months from the date of the most recent child support order. An administrative review may be requested sooner if:

- A party who had a reduced child support obligation because he or she was unemployed or underemployed before is now fully employed.
- A party has become involuntarily unemployed or been laid off for more than 30 days or has become permanently disabled, reducing his or her earning ability.
- Either party has been institutionalized or incarcerated and cannot pay support for the child's entire childhood (and doesn't have any property to sell to cover the child support).
- Either party has experienced a 30% difference in income for six months that is likely to continue.
- Support for one or more children must be terminated because the child is emancipated (has attained 18 years of age).
- Health insurance availability/cost or daycare cost has changed.
- A party is going into or returning from active military duty.

**P. Must I notify the CSEA of any changes to my or the children's circumstances?**

Both parties under a child support order must notify the CSEA of any address changes or of any changes that would terminate the child support order, such as a child's death, marriage, incarceration, enlistment in the armed services, a change in the legal custody of the child, or the child's emancipation. The obligor must promptly notify the CSEA if he or she loses his or her job, or obtains new employment. The CSEA notice requirements are included in the child support order. Failure to notify the CSEA of these changes may be contempt of court and be punishable by the court.

**Q. Must I cooperate with the CSEA in obtaining a child support order or collecting child support if I am receiving welfare benefits?**

Yes, if you are recipient of welfare cash assistance (Ohio Works First - OWF) benefits or Medicaid benefits for your children, you must cooperate with the CSEA in establishing paternity, obtaining a child support order, collecting child support, and enforcing the child

support order. However, there is an exception for victims/survivors of domestic violence or sexual violence.

If you or your child are a victim of domestic violence or sexual violence and you do not want the CSEA to try to collect child support (for example, if you are afraid that your abuser will retaliate against you or you are afraid that the CSEA may release your address to your abuser), you can ask for a temporary “good cause” waiver that allows you to not cooperate with the CSEA. If your child was conceived as a result of sexual assault, you can ask for a permanent waiver. In domestic violence or other sexual violence cases, you can also ask the CSEA to place a “family violence indicator” in your case file. If they agree, they cannot send your address to your abuser (or anyone else). To request a good cause waiver and the inclusion of a “family violence indicator” in your CSEA case file, tell the CSEA and provide documentation of the domestic violence from third parties such as the police, courts, domestic violence shelters, attorneys, medical professionals, or “other persons with knowledge of the domestic violence.” If you cannot get any written documentation from a third party, the CSEA must accept your own written statement, unless it has a reasonable basis to find your allegations not credible. For more information on waivers, see: <http://codes.ohio.gov/oac/5101:12-10-32v1>.

**R. How do unmarried partners divide up their property and debts if they split up?**

Unlike divorcing or separating spouses, unmarried partners who split up cannot go to domestic relations court and ask the court to order an equitable distribution of the parties’ assets and debts. Moreover, for married couples any debts or assets acquired by either spouse during the marriage are usually considered jointly owned marital property or debts in the event of a subsequent divorce, dissolution of marriage, or legal separation. By contrast, each unmarried partner is presumed to own his or her property and debts unless they have jointly incurred certain debts or have deliberately combined their assets by, for example, opening a joint bank account or putting both of their names on a deed. If there are jointly owned assets, they are presumed to be owned in equal 50-50 shares unless there is a written agreement with different terms or, with bank accounts, where one partner made a greater contribution of funds to the account and can prove it.

The legal presumption of separate ownership of the assets of unmarried partners can be overcome by a written agreement to share assets. Such cohabitation or living together agreements are an important — and sometimes essential — tool for unmarried couples to resolve the ownership of their property and debts after they split up.

**S. What should I do before or at the time I break up with my partner?**

You should take or consider taking the following steps<sup>3</sup>:

- Locate and review any cohabitation agreements and financial records.

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<sup>3</sup> Warner, Ihara, and Hertz at 279.

- Protect and secure any viable items of personal property, such as works of art or items with sentimental value.
- Plan where you're going to live if you are the one who is going to leave the joint residence. However, you should continue picking up your mail and paying your share of the household expenses, and you should periodically check on the condition of your property at your former residence to prevent your partner from claiming that you have abandoned your property.
- If there has been serious domestic violence, take steps to protect yourself. *See Chapter 8 on Domestic Violence.*
- Close joint credit cards and bank accounts.
- Make a list of the bills that are essential to pay and keep those bills current.
- If possible, make a short-term agreement with your former partner to handle the payment of bills and expenses, the storage or transfer of furniture and personal belongings, care of pets, the protection of property in dispute, and other issues.

**T. How can unmarried couples resolve their conflicts if informal negotiations are unsuccessful and still avoid a court trial?**

The two most common alternatives to traditional court proceedings are mediation and arbitration, both known as forms of “alternative dispute resolution” (ADR).

Mediation is a private, non-adversarial process where a neutral person — a mediator — helps you settle your differences. With mediation, you and your former partner can get together to talk face-to-face about your disagreements, with a neutral mediator helping you to voluntarily reach an agreement. Mediation can be effective, and it may be less costly and time-consuming than going to court. When agreement is reached, the mediator will draft or help you draft a settlement agreement.

There are many private mediators who charge a fee for mediation services. In some areas, there are community or neighborhood mediation programs that are free or on a sliding fee scale. Domestic relations and juvenile courts also sometimes operate mediation programs. A friend, colleague, or attorney may be able to refer you to a qualified mediator.

Another important ADR method is arbitration. You and your ex-partner can submit your claims against each other to an arbitrator — a neutral decision maker who is usually an attorney. The arbitrator will hear all the testimony and evidence at an arbitration hearing — a kind of private trial — and issue a binding, and usually non-appealable, decision. Arbitrators do not work for free and you and your ex-partner would need to agree to pay for the arbitrator's time. Arbitration is usually quicker and somewhat less formal than a court proceeding and may be less expensive than a full trial in court. However, Ohio law prohibits the arbitration of child custody disputes.

**U. Can the court order the parties to undergo mediation after a child custody case is filed?**

In Ohio, a court that is hearing a custody case may order the parents to undergo mediation to try to resolve the parties' differences regarding parenting rights. The court must consider a history of domestic violence or child abuse when it decides whether to order mediation. If there was a criminal conviction for domestic violence or child abuse, the court may order mediation only if the court determines it is in the best interests of the parties to order mediation and makes specific written findings of fact to support its determination. If the court orders mediation, it may order one or both parents to pay the costs of mediation. As with other court costs, you can ask the court to waive your costs by filing a poverty affidavit.

The court-appointed mediator may be an attorney, psychologist, or other professional who has training and mediation skills in domestic relations laws. One or more mediation sessions will be scheduled. The mediator guides the discussion of all the issues to be covered and tries to help the parties reach agreement on each issue. At the end of the mediation sessions, the mediator will file a report with the court. The mediator cannot disclose to the court or anyone else what happened during the session, only whether there was an agreement, and if so, what are the terms of the agreement.

If you reach an agreement on all or some of the issues, you can sign the agreement. If you have an attorney, you should wait to sign the agreement until your attorney reviews it and advises you to sign it. The court will review the mediation report and any agreement signed by the parties. If it approves the agreement, the court will make it an order of the court, so that the agreement has the same legal effect as a court order issued after a contested trial.

**You do not have to reach an agreement in mediation.** No one can force you into settling your case or agreeing to something you believe is wrong. If you don't reach agreement on any issues, the mediator will write a short statement for the court that says you participated and that no agreement was reached.

**Possible Benefits** of resolving a case by mediation:

- Your case may be resolved more quickly and more cheaply than through litigation.
- Parties may have less anger and bitterness because there is no clear "winner" or "loser."
- Agreements often lead to greater mutual satisfaction of both parties (if you are able to freely discuss your wishes in the mediation and the other party does not coerce or pressure you).
- It keeps the children from having to testify or meet with the judge or magistrate in chambers.
- Mediation sessions are usually scheduled around your availability.

**Risks of Mediation** in cases involving domestic violence:

- Mediation works best when parties have equal power in the relationship, information about the family’s financial resources, the ability to protect their own interests, and the willingness to work together for a fair outcome. Those conditions rarely exist in domestic violence situations.
- Abusers usually try to maintain power and control, make all the decisions, monopolize speaking time, and use intimidation tactics to control all aspects of their partners’ lives. It is no different in mediation, where the abuser will try to get you to agree to things that increase his or her access to you — such as frequent phone calls (supposedly about the children), or additional visits, and forcing you to agree or suffer the consequences of not agreeing with the abuser every time a decision needs to be made about the children.
- Abusers are likely to use mediation to further manipulate, control and intimidate their partners, because of the required participation of both parties and the absence of “authority” figures like a judge or law enforcement officer.
- Mediation requires the parties to “cooperate” in the mediation sessions, but abusers are unlikely to cooperate. Some will try to convince the mediator that they are very reasonable and try to make you look unreasonable by asking for or demanding things that you should not agree to.

**Mediation in Cases involving Domestic Violence:** All Ohio mediators in domestic relations cases must receive training on domestic violence. If mediators are aware of any history of domestic violence, they should use their communication skills to try to balance the negotiating power of the parties, help the victim express his or her views, and try to gain full communication and information disclosure by the parties. The mediator can interview the parties in separate rooms and then communicate each party’s views and proposals to the other party, so there is no contact between the two parties. If you are a domestic violence victim, your victim advocate may accompany you during any mediation sessions. Although victim advocates cannot give legal advice, they can give you emotional support and help you get through the process.

**Staying Safe in Court-Ordered Mediation:** In domestic violence situations, remember that to comply with an order for mediation, all you have to do is show up. Mediation programs usually have screening forms that will ask whether you feel safe participating. You can say no, and the mediator may tell the court that mediation will not work for your case. If you do go to mediation, ask if you can sit in a different room and have the mediator go back and forth between your room and the other party’s room. If your ex-partner becomes threatening or you feel unsafe during the mediation, you should say so and ask that the mediation be terminated.

**V. What are the roles of “guardians ad litem” (GALs) and custody evaluators?**

Courts sometimes appoint a guardian ad litem (GAL) and/or a custody evaluator to investigate the families, prepare a report, and make recommendations to the court about

future parenting arrangements. Their reports and recommendations can significantly influence the outcome of a case. Therefore, it is important to understand their roles and duties and how you should interact with them.

**Custody Evaluators:** Custody evaluators may be social workers, mental health experts, or other professionals who are court employees who are often part of a special court unit called “Court Services,” “Family Services,” or the like. Or, the court may appoint an outside expert — usually a psychologist or other mental health expert — to interview the parents and children, conduct psychological tests, and investigate what goes on in your family. Some courts may give the parties the opportunity to submit the names of proposed custody evaluators.

**Guardians ad Litem (GALs):** Either parent can request the appointment of a GAL for their child, or the court may appoint a GAL to represent the best interest of the child. Most courts appoint an attorney as a GAL, but some courts may appoint a non-attorney GAL or a Court-Appointed Special Advocate (CASA) volunteer as a GAL. A GAL’s role is to investigate the family’s circumstances and recommend child custody and visitation arrangements that are in the best interest of the child. Courts vary in how GALs are paid, but in most counties, you will be required to pay the GAL a fixed amount as a deposit and later possibly pay an additional hourly fee, just like an attorney would charge in a case. Some counties have funds to pay for the GAL when the parties cannot pay, but most counties do not. Ask if you need to file a poverty affidavit to qualify and request the appropriate form at the Clerk of Court’s Office.

**Rules of Conduct for GALs:** After being appointed to a case, GALs must conduct a neutral investigation and, after completing their investigation, must submit a written report, including recommendations, to the court. Their written reports must be made available to the parties or their attorneys before the final hearing. GALs and custody evaluators must behave ethically and conduct thorough and impartial investigations. The rules that GALs must follow can be found at the website of the Ohio Supreme Court. Go to <http://www.supremecourt.ohio.gov/LegalResources/Rules/> and search for Rule 48 of the Rules of Superintendence for the Courts of Ohio.

**Investigation:** The GAL or custody evaluator should interview both parents or parties seeking custody and other persons who can provide relevant information regarding the parents, other caretakers and children. Other sources of information may include family members, friends, neighbors, former partners, doctors, clergy, teachers, counselors, and victim advocates. GALs should also review records such as police reports, child protection reports, court files, medical records, and school records. The GAL may also investigate any complaints that the parents have about one another. For example, if one parent complains that the other parent does not get the child to school on time, the GAL may look at the child’s attendance records, and perhaps ask teachers or counselors.

**Interaction with the GAL or Evaluator:** When a GAL or custody evaluator is appointed to represent the best interest of your children, contact him or her as soon as possible. You will be asked to set up an appointment at your home or at their office. Be prepared to

present detailed information to the GAL or custody evaluator about your child's life, including the child's daily schedule, special needs the child has, the names of the child's doctors or counselors, and the names of other people who have had regular contact with the child. Be able to explain what you know and what your child has told you about the child's interactions with the other parent.

Where there is a history of domestic violence, try to clearly explain what happened between you, the abuser, and the children. Describe the most serious domestic violence incidents and the overall history of domestic violence. Also, explain what you did to protect the children from the domestic violence. Give the GAL or evaluator copies of any photographs, police reports, or other evidence that the domestic violence happened.

Be prepared to talk about your child's needs and experiences and your parental strengths. Take an active role in providing information to the evaluator or GAL, and explain why you took any actions that the other parent may make a big deal about. On the other hand, remember that what you say to a GAL or evaluator is not privileged or confidential. The other party may gain access to everything that you give the GAL or evaluator, even the notes that are taken about your conversations.

**Influencing Court Decisions:** The court will consider the custody evaluator's report or the GAL's report and recommendations in determining the best interest of the child. You or your attorney can cross-examine the evaluator or GAL at trial about their investigation and the GAL's recommendations. The court must weigh and consider all the evidence concerning the best interest of the child and may ultimately reject the GAL's recommendations.

Courts give considerable weight to the GAL's recommendations. Therefore, it is important to cooperate with the GAL and try not to alienate the GAL because he or she may have a large impact in your case. However, GALs sometimes fail to perform effective and impartial investigations, or make inappropriate recommendations to the court. Many GALs do not fully understand the dynamics of domestic violence or are insensitive to the plight of domestic violence victims. In extreme cases, a parent may ask the court to remove a GAL and appoint a new GAL, but that rarely happens. The court must have a complaint procedure by which you may submit written comments and complaints regarding the performance of GALs practicing before that court. In addition, if you feel an attorney was unethical in your case, you can file a complaint with the Supreme Court Disciplinary Counsel.

**W. Will I have to undergo psychological testing in a child custody case?**

Maybe. A court-appointed psychologist or other mental health expert may conduct psychological tests of the parents and (less likely) children. Although such testing can sometimes produce valuable information regarding parental mental health and fitness, the results can sometimes be misleading. Be especially careful about psychological testing in domestic violence situations. Such testing often misdiagnoses a domestic violence victim's response to trauma as mental illness. There is no psychological test that can accurately



determine whether someone is an abuser or has been abused. Moreover, standard psychological tests which are designed to measure personality, psychopathology, intelligence, or achievement do not address many issues relevant to raising children or parents' child-rearing attitudes and abilities.

**X. If we are a same-sex unmarried couple, can we use a surrogate mother to build a family?**

Yes. In Ohio (unlike some states), a woman or a couple may enter into a surrogacy contract with a woman. Surrogacy is a third-party form of assisted reproductive technology in which a woman carries a child for another woman or a couple. In gestational surrogacy, the resulting child is not biologically related to the surrogate. The surrogate is implanted with a fertilized egg, using the couple's egg and sperm or the egg and sperm of a donor.

Although surrogacy law in Ohio remains somewhat unsettled, several Ohio Supreme Court decisions indicate that couples — including same-sex couples — may enter into a written surrogacy agreements in Ohio. This surrogacy agreement should prohibit the surrogate from asserting her parental rights and clearly express the parties' intent that the couple contracting with the surrogate will become the natural legal parents of the resulting child. If done properly, the surrogate mother should not retain any parental rights.

It is common for intended parents to choose a known surrogate, a woman who they know on a personal level, such as a friend or relative. In addition, surrogacy agencies can match prospective parents with potential surrogates.

**Y. Do lesbian, gay, bisexual, and transgender (LGBT) parents face special challenges in child custody and visitation disputes?**

Yes. Despite an increase in the number of same-sex couples who are having children together through assisted reproduction, most people in same-sex relationships with children became parents during a prior heterosexual marriage or relationship. Although Ohio child custody and visitation law does not discriminate based on sexual orientation or gender identity, LGBT parents have to overcome judicial stereotypes and anti-gay bias on the part of judges, custody evaluators, and other court personnel. When contesting custody or visitation issues with the other biological parent from their previous heterosexual relationship, LGBT parents stand on an equal legal footing with their child's heterosexual partner, and the "best interest of the child" test should determine the outcome of such cases.

The other context in which LGBT parents face custody and visitation issues is where same-sex couples are raising a child or children together. It is usually the case that only one of the same-sex partners is a legal parent. Therefore, the termination of the same-sex relationship raises legal issues that are not present in custody disputes between opposite-sex parents. The first issue is whether the non-biological parent can bring a custody action against the biological parent. A person who is "in loco parentis" can maintain a custody action against a natural parent. "In loco parentis" means someone who is acting or has acted as a temporary guardian or caretaker of a child, taking on some or all the responsibilities of a parent.

Although same-sex partners will likely have standing to seek custody or visitation of their partner's child, they will likely succeed in only one of two circumstances. Either they — like all non-biological parents under Ohio law — must prove “parental unsuitability” by demonstrating that awarding custody to the non-biological parent-partner is necessary to prevent harm or detriment to the child, or the same-sex partners must have entered into a shared custody or co-custody agreement. Absent compelling evidence, it is difficult to obtain custody by trying to prove “parental unsuitability.” Moreover, “parental unsuitability” custody battles are a win-lose proposition. Either the natural parent or the non-biological parent partner will gain custody, and the court will not order a shared or co-custody arrangement in these cases.

**A shared custody or co-custody agreement** between same-sex partners may be approved and enforced by the court if it is in the best interest of the child. Parents may waive their right to sole custody of their children and are bound by an agreement to do so. The parent's agreement to grant shared custody or co-custody of their child to a third-party is enforceable if the court determines that the custodian is a proper person to assume the care, training, and education of the child. The Ohio Supreme Court has held that when the same-sex partners are unmarried, a juvenile court must determine whether a shared custody agreement is in the best interest of the children and, if so, may approve the shared custody agreement and order shared custody between the same-sex partners. Moreover, issuing a court order granting visitation to a nonparent ex-partner does not violate the parent's fundamental constitutional rights to raise and care for their own children.

See the Appendix for an example of a same-sex co-custody agreement and court order approving the co-custody arrangement.

#### **Z. Can transgender parents be awarded child custody?**

Yes, but transgender parents face major hurdles. Some transgender persons have biological children prior to transitioning to living as the other gender. In other cases, a transgender person may become a parent after transitioning to the other gender by entering into a marriage and having children through adoption or assisted reproduction.

In custody cases, the transgender parent is a legal parent and should have all the legal rights and responsibilities of legal parentage. However, there are very few reported cases in Ohio or most other states addressing the relevance of a parent's gender transition or transgender identity in child custody proceedings. Transgender parents involved in custody disputes may see their transition or transgender identity raised by their former spouse or partner, or by the judge, as a basis for trying to limit or deny them custody or visitation with their children.

While there has been considerable progress in the legal system in the field of psychology on issues relating to transgender persons and their civil rights, it is important to address potential bias against transgender parents. Recommended strategies include:

- Plan your gender transition process with the guidance of a doctor or therapist, including help to enable your partner or former partner to be more accepting and understanding of your transition.
- Prior to coming out to your children as transgender, consult with a psychologist or social worker on how to make the adjustment as easy as possible for them.
- If possible, include the children's other parent in the plan for "coming out" to the children.
- In addition to presenting traditional "best interest" evidence to the court, consider obtaining and presenting expert testimony on how the transgender parent's transition and related treatment has improved his or her mental health, which helps make the person a better parent; how the transgender parent sought the advice of a professional to help minimize difficulties in adjustment for the children; on the transgender parent's ability to be an effective parent; and highlighting the scientific research showing that children may have an easier time adjusting to a parent's gender transition at young ages, and thus it is best not to delay disclosure.
- Draw upon the significant body of analogous case law involving other social stigmas (e.g., living in a nonmarital relationship, having a child out of wedlock, etc.) to argue that the court may not limit custody rights without evidence showing actual harm to the child. Furthermore, curtailing transgender parents' custody or visitation rights based on unproven assumptions or speculation violates their fundamental constitutional right to maintain a child-parent relationship that is protected by the Due Process Clause of the U.S. Constitution.

## Chapter 8 — Domestic Violence and Unmarried Partners

Domestic violence is a pattern of behavior used to establish power and control over an intimate partner through fear and intimidation, including the threat or use of violence. Domestic violence can occur among heterosexual or same-sex couples, and among married or unmarried couples. Women and men can be victims of domestic violence, but in heterosexual relationships women are more likely to be victims of serious domestic violence. Ohio has strong domestic violence laws. Since 1979, domestic violence has been a separate criminal offense. Moreover, in investigating incidents of alleged domestic violence, law enforcement officers must follow a “preferred arrest” policy.

In any criminal domestic violence proceeding the victim, or in some cases a law enforcement officer acting on the victim’s behalf, may file a motion for a **Temporary Protection Order (TPO)**. If the court hearing the criminal case grants the TPO, it will order the defendant to avoid any contact with his victim. However, a TPO may only be in effect for several months because it expires at the end of the criminal case — when the case is dismissed, the defendant is acquitted, or the defendant is convicted and sentenced.

Ohio law also provides for the issuance of **civil** protection orders (CPOs) in domestic violence situations. CPOs last longer and provide greater remedies than criminal TPOs. Ohio law also provides for the issuance of stalking and sexually oriented offense civil protection orders and juvenile civil protection orders. The available remedies and procedures for seeking and obtaining these types of civil protection orders are very similar to the remedies and procedures for domestic violence DV civil protection orders.

The Supreme Court of Ohio has adopted and published protection order forms for use in the Ohio courts. These forms or “substantially similar forms” **must** be used in all protection order cases in Ohio. The forms also include helpful instructions and definitions.

Non-attorney victim advocates — usually affiliated with a local domestic violence shelter or prosecutor’s office — can help victims prepare the required protection order forms. In addition, a victim advocate may accompany a victim at any court hearings, depositions, or any other proceedings in a civil protection order case. However, a victim advocate cannot argue your case before the court, negotiate on your behalf, or otherwise act as your attorney.

### **A. Are there any indications of the level of danger in domestic violence situations?**

Any domestic violence situation can be dangerous, and can get more dangerous if your abuser believes you are ending the relationship. Here are some known indicators of high danger:

- You have started thinking about, planning to, or taking steps to end the relationship.
- Your abuser is depressed; your abuser is an even higher risk if he or she has talked about or attempted suicide.
- Your abuser has a history of threats to seriously harm or kill you.

- Your abuser is stalking you.
- Your abuser has access to weapons, especially guns, or has previously used weapons against you.
- Your abuser has a history of causing serious injury or has strangled/choked you.
- Your abuser has problems with substance abuse (alcohol or drugs) or mental illness.
- Your abuser has been able to avoid getting in trouble or suffer any consequences for past violence, encounters with police, violations of protection orders, etc.
- Your abuser has a history of injuring or killing pets.
- You sense you are in danger. If you feel afraid that he or she will seriously hurt or kill you, listen to your intuition.

**B. If I am experiencing domestic violence, should I make and implement a safety plan?**

Yes. If you are going through any legal process after being battered, sexually assaulted, or stalked, it is extremely important that you have a safety plan. As your legal case goes on, your situation may get even more dangerous. A safety plan can help reduce danger.

A safety plan is a specific plan you make and regularly update with the help of an attorney or victim advocate to help you reduce the danger you face from your abuser in all parts of your life — where you live, work, go to school, your children’s school/daycare center, etc. Your safety plan also helps you develop allies or helpers — people you can turn to if you find yourself in danger. In addition, a comprehensive safety plan can help you identify resources for other issues you may be facing, like the need to find childcare, food, housing, employment, credit repair, public benefits, interpreters, support to stay sober, job training, mental health counseling, and more.

You will also need to consider your safety while at court. Whether or not you address these issues in your safety plan, it is important for you to plan for safety in those days when you will be entering and leaving court buildings where the perpetrator will be. Some tips for safety at court are:

- Bring a support person and a victim advocate if you can.
- Ask that the perpetrator be required to stay 15 minutes after the court hearing so that you can leave the courtroom and building safely.
- Ask for a bailiff or security officer to escort you in and out of the building.
- Ask to wait in a separate waiting area from the perpetrator and his or her people.
- Wear comfortable shoes so that if you must hurry to safety, you can.
- Plan to meet with your advocate or support person after court to re-evaluate your safety plan and what happened at court.

**C. What is the definition of “domestic violence” in the civil protection order statute?**

The civil protection order (CPO) definition of domestic violence differs from the criminal definition in that the former does not require the abuser to “knowingly” cause or attempt to cause physical injury to the victim and includes additional types of conduct by the perpetrator. Specifically, the definition of “domestic violence” for the purpose of obtaining a CPO is:

1. Attempting to cause bodily injury to a family or household member;
2. Recklessly causing bodily injury to a family or household member;
3. Placing a family or household member by the threat of force in fear of imminent serious physical harm or committing menacing by stalking or aggravated trespass against a family or household member;
4. Committing child endangerment (child abuse) against a family or household member; or
5. Committing a sexually oriented offense (such as rape, gross sexual imposition, or importuning).

Some examples of “threats of force” that constitute domestic violence are:

- Pointing a gun or waving a knife at the victim;
- Driving or moving car toward the standing victim;
- Telling the victim, “I’m going to shoot you,” “I’m going to beat you to a pulp,” “You’re going to be a dead person,” “You’re going to be sorry when I get my hands on you,” or making similar verbal threats; or
- Picking up a bullet and saying, “This is meant for you.”

On the other hand, vague or ill-defined threats such as “you will be sorry” or “I’ll get back at you for this” generally do not rise to the level of “domestic violence” threats under Ohio law. In addition, so-called “conditional threats” do not by themselves constitute unlawful threats of force under Ohio law. A “conditional threat” means a type of threat where the threat is conditional on some condition or circumstance that is impossible or unlikely to be fulfilled.

Photographs or medical evidence of actual injuries sustained by the victim are also helpful to proving a domestic violence case. However, domestic violence may occur without the abuser inflicting visible injuries or marks on the victim.

It is easier to prove domestic violence for the purpose of obtaining a CPO than it is to prove potential later criminal charges of domestic violence. The burden of proof for a CPO is the “preponderance of the evidence” rather than the “beyond a reasonable doubt” required in criminal cases. Proof “by a preponderance of the evidence” means that it is more likely than not that the alleged acts of domestic violence occurred and that the victim is in danger.

#### **D. Who is covered by Ohio’s domestic violence laws?**

The domestic violence laws apply to persons who abuse a family or household member. “Family or household member” means any of the following who is residing or has resided with the offender:

1. A spouse, a person living as a spouse, or a former spouse of the abuser;
2. A parent, foster parent, or child of the abuser, or another person related by blood or marriage to the abuser;
3. A parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by blood or marriage to a spouse, person living as a spouse, or former spouse of the abuser. A “person living as a spouse” is a person who is not married to the abuser, but is either cohabiting or has cohabited with the abuser during the past five years. “Cohabitation” means the sharing of family and household responsibilities, including household finances, and having an intimate relationship between the abuser and the victim. (Emphasis added.)

In addition to the above categories of persons who are living or have lived together, persons who have a child in common are covered by the domestic violence laws regardless of whether they have ever lived together or cohabited. Therefore, the mother of a child could file domestic violence charges or request a domestic violence protection order against the father of the child regardless of whether they are married, have been married, or have ever lived together.

Unmarried cohabiting partners should be covered as either “a person living as a spouse” or as persons who have a child in common.

#### **E. What does “cohabitation” mean?**

“Cohabitation” under the Ohio domestic violence laws means that two adults are living together in the same household, sharing certain obligations which are equivalent to a spousal-type relationship. The Ohio Supreme Court has concluded that a person is “cohabiting” for purposes of a family or household or family relationship under the domestic violence statutes if there is:

1. a sharing of familial or financial responsibilities; and
2. consortium.

“*Familial or financial responsibilities*” include providing shelter, food, clothing and utilities and commingling (mixing together and sharing) assets.

“*Consortium*” includes mutual respect, fidelity, affection, society, cooperation, solace, comfort, aid of each other, friendship, and conjugal (sexual) relations.

Some critics of the Supreme Court’s definition have said that even roommates could be covered by the domestic violence laws in light of this broad definition of “*cohabitation*.” But the Ohio courts do not apply this definition to cover mere roommates; there must be a close personal or intimate relationship (usually involving sexual relations) for persons to be “cohabiting” within the meaning of Ohio’s domestic violence laws. On the other hand, the Ohio Supreme Court has ruled that, if intimate partners are living together, the victim of abuse does not have to prove that they have shared or are sharing household expenses or other familial or financial responsibilities.

**F. Can same-sex couples qualify as “family or household members” under Ohio’s domestic violence laws?**

Yes. The protections afforded to male/female relationships are equally available to same-sex relationship. If the same-sex couple consists of two adults living together in the same household, sharing certain obligations which are equivalent to a spousal type of relationship, they meet the legal definition of “cohabiting.” Therefore, the victim of violence in a same-sex relationship can file domestic violence charges or seek a domestic violence protection order against the abuser.

**G. Does a couple have to live together for a minimum period of time before they have a “family or household member” relationship subject to Ohio’s domestic violence laws?**

No, there is no minimum period of time. The protections of the domestic violence laws are equally applicable to couples who have lived together for years and to couples who have been living together for only a few weeks. However, in cases where the abuser and the victim are not married to each other, it will be easier to convince the court that the parties are “cohabiting” if they have lived together for a reasonable period of time.

**H. How can I get a civil protection order (CPO)?**

A victim, a parent of a victim, or any adult family or household member of a victim, may file a petition for a domestic violence CPO. The person filing the petition is named as the **petitioner**, and the alleged abuser is named in the petition as the **respondent**. The petitioner may request an emergency (“*ex parte*”) civil protection order by going before the court (a judge or magistrate) on the same day the petition is filed. No filing or service fees may be charged to the petitioners. Service — meaning formal delivery of the petition and *ex parte* CPO to the alleged abuser (respondent) must first be attempted by personal service by the sheriff or a sheriff’s deputy, but service can be made by certified mail or newspaper publication if efforts to obtain personal service are unsuccessful.

If the court grants an *ex parte* CPO, it must then schedule a “full hearing” within seven to ten court days after the court grants the emergency protection order. (If there is no emergency protection order, the court still usually schedules the full hearing within the same seven- to ten-day period after filing the petition.)



At the full hearing, both the petitioner (victim) and the respondent (alleged abuser) may present their evidence proving or disproving the alleged abuse, including their own testimony, the testimony of other witnesses, and any relevant documents. The petition and any emergency protection order must be served on the respondent by the sheriff or a sheriff's deputy, or if attempts at personal service area unsuccessful, by certified mail service or, as a last resort, by service by publication or (if indigent) posting at the courthouse.

**I. In what court must the petition for a domestic violence civil protection order (CPO) be filed?**

If the alleged abuser is an adult (over 18 years of age) the petition must be filed in the domestic relations division of the court of common pleas or, if there is no domestic relations division, in the general division of the court of common pleas. If the alleged abuser is a minor (e.g., the victim's minor child or sibling), the petition must be filed in the juvenile court.

A domestic violence victim may file her CPO petition in the appropriate court in any one of the following counties:

1. the county in which the respondent (abuser) resides;
2. the county in which the respondent (abuser) resides or has his principal place of business;
3. the county in which the respondent committed the acts of domestic violence; or
4. the county in which the petitioner currently or temporarily resides.

In rural areas, the victim will often be temporarily residing in a domestic violence shelter in another county other than the county in which she has resided or expects to reside in the future. Therefore, the victim may file her CPO petition in the county in which the shelter is located even though he or she may be staying there for only a short time

**J. When can the court issue a domestic violence ex parte (emergency) civil protection order (CPO)?**

An "*ex parte*" order is an emergency order issued by the court after hearing from just one side of the case. The court will grant an *ex parte* (emergency) order if it is persuaded that there is "immediate and present danger" to a family or household member. Some examples of "immediate and present danger" include situations where:

- the abuser has recently threatened or physically abused a family or household member;
- the abuser has been previously convicted of, or pleaded guilty, to domestic violence; and/or

- the abuser is engaged in repeated acts of domestic violence against a family or household member.

The victim must tell the judge that he or she presently fears and believes that harm is just around the corner if the abuser is not stopped.

Some courts use what is known as a “lethality checklist” incorporating these and other factors to assess whether an abuser is likely to injure or kill his or her victim in the near future. The Ohio Supreme Court’s Court new Guide on Domestic Violence & Allocation of Parental Rights and Responsibilities — which provides valuable guidance to judges and magistrates in child custody and visitation cases — includes a lethality checklist. The Guide can be found at:

<https://www.supremecourt.ohio.gov/JCS/domesticViolence/publications/DVAllocationParentalRights.pdf>.

Lethality factors the courts should consider include:

- The degree of injury to the victim in the past as well as in the present;
- The frequency and severity of the violence;
- Whether the violence appears to be escalating;
- Any threats of retaliation made by the abuser to the victim or another family or household member;
- The use or threatened use of a weapon;
- The abuser’s prior criminal history;
- The abuser’s alleged use of drugs and/or alcohol;
- The abuser’s mental health;
- Whether the abuser has threatened suicide; and
- Specific past acts of physical abuse.

**K. What kinds of remedies can a court order in a domestic violence civil protection order (CPO)?**

The CPO will order the abuser to stop abusing, annoying or harassing the victim. In addition, the court may evict the abuser from the parties’ residence by ordering the abuser to vacate the home. The judge may also order the abuser to stay away from the victim or to have no contact with the victim, and to not enter the victim’s residence, school, business, or place of employment.

In addition to the no-abuse and eviction orders, the CPO may award the victim temporary custody of the parties’ minor children, temporary spousal support and/or child support, possession of one of the parties’ motor vehicles, and use and possession of other personal

property of the parties. However, the CPO cannot change title to any real estate or permanently divide the parties' property.

Other likely remedies include prohibiting the abuser from interfering with the utilities or mail at the victim's residence, requiring the abuser to turn over any necessary keys to the victim, and directing law enforcement officers to assist the victim in obtaining custody of her children, transferring personal property, etc. The court may also order the parties to obtain counseling and may order any other relief that it considers "equitable and fair."

A domestic violence CPO remains in effect for a definite period of time as set forth in the CPO. That period may be for a maximum duration of five years. In some counties, the judges routinely order that their CPOs remain in effect for five years. In other counties, the judges usually order that CPOs remain in effect for a shorter time period, such as two years.

**L. What is the burden of proof for the victim to obtain a domestic violence civil protection order (CPO)?**

The burden of proof in a civil protection order case is "by a preponderance of the evidence." In other words, the victim must simply prove that it is more likely than not that the alleged domestic violence occurred and that she is in danger. The Ohio Supreme Court has rejected the use of the more burdensome "clear and convincing evidence" standard that is usually applied in cases where a party seeks an injunction against another party.

**M. Can a domestic violence civil protection order (CPO) require the abuser to pay support to the victim even where the abuser and the victim are not married and have no children?**

Yes, if the abuser has customarily provided for or contributed to the support of the victim. Even though there is no duty of child support if the parties have no children in common, and there is no duty of spousal support to an unmarried partner, the CPO statute is unusual in that it empowers the judge to order support to a victim who has been economically dependent on her abuser even in the absence of any traditional legal duty of support.

**N. Can the abuser be required to turn over any weapons, and can the police seize the abuser's weapons with or without a court order?**

Law enforcement officers responding to a domestic violence call must seize any deadly weapons (guns, knives, etc.) that were used, threatened to be used, or brandished during the domestic violence incident. However, Ohio law does not authorize law enforcement officers to seize any other weapons available to the abuser that were not used, threatened to be used, or brandished by the abuser during the incident of domestic violence.

However, once an abuser has been criminally convicted of (or pleaded guilty to) domestic violence, or a domestic violence protection order has been issued against the abuser, the abuser may no longer obtain or possess any guns or ammunition. In addition, a CPO may order the abuser to turn over all deadly weapons in his possession at the earliest possible

opportunity to a law enforcement officer, and the law enforcement agency must then hold the weapons in protective custody until further court order.

**O. Can a domestic violence civil protection order (CPO) later be dismissed or modified?**

Yes. But a CPO cannot be terminated, modified, waived, or otherwise nullified without a court hearing, and it must be shown that the protection order is no longer needed or the terms of the protection order are no longer appropriate.

If the respondent (abuser) brings a motion to modify and terminate the CPO, and the court denies the motion, the court may assess court costs against the respondent for the filing of the motion. However, no court costs may be assessed against the petitioner regardless of who brings the motion to modify or terminate the CPO or the outcome of the case.

In deciding whether to grant or deny a request to modify or terminate a CPO, the court must consider various factors set forth in Ohio Revised Code Section 3113.31 (E)(8) including, but not limited to, whether the petitioner still fears the respondent; the current nature of the relationship between the petitioner and the respondent; whether the respondent has complied with the terms and conditions of the original order; and the time that has elapsed since the original order was issued.

**P. Can a domestic violence civil protection order (CPO) be renewed or extended for an additional period of time?**

Under the CPO statute, courts may renew CPOs so that they remain in effect beyond the time period set forth in the original CPO. The procedure for renewing a CPO is for the victim to file and serve on the abuser a motion or petition for renewal or extension of the CPO.

In some Ohio courts, a new act or threat of violence is required for a renewal or extension of a CPO. In most jurisdictions, a combination of past domestic violence and recent threats of future violence is sufficient to persuade the court to renew the CPO. Moreover, the motion or petition for renewal of a CPO should be filed before the expiration date of the original CPO.

**Q. If a domestic violence civil protection order (CPO) has child custody and/or visitation orders which conflict with another custody or visitation order or juvenile court custody order, which order is controlling?**

Under the CPO statute, the court considering the petition for a CPO may not include any child custody or visitation orders in the CPO if there is an existing order from another court determining custody or visitation. The earlier order is controlling. Moreover, if a CPO does include a child custody or visitation order and another court later issues a custody or visitation order in a divorce case, the later order supersedes the custody and visitation order included in the CPO.

A CPO may, however, implicitly alter a previous custody or visitation order if the children are named as persons protected by the CPO and if there are stay-away, no-contact or other safety provisions in the CPO that by implication override the prior custody or visitation order.

**R. What are the penalties for violating a protection order?**

A violation of either a criminal temporary protection order (TPO) or a civil protection order (CPO) is a separate crime under the Ohio Revised Code and constitutes contempt of court. Usually, violators are prosecuted, convicted, and sentenced to the applicable criminal penalties.

A first conviction of violating a protection order is a misdemeanor of the first degree, punishable by up to six months in jail and/or a \$1,000 fine. A second conviction of violating a protection order is a felony of the fifth degree, punishable by up to one year in jail and/or a \$2,500 fine. A third or subsequent conviction will constitute a third-degree felony and will trigger a mandatory prison sentence.

If the violator of a CPO is not criminally prosecuted for violating a protection order, the victim may then file a motion for contempt against the violator. If the court finds the violator to be in contempt of court, the court may impose a jail sentence and/or fine.

**S. Are law enforcement officers required to enforce protection orders?**

Yes. The CPO statute requires law enforcement officers to enforce CPOs. Moreover, Ohio's preferred arrest statute provides that arrest is the "preferred course of action" when any officer has reasonable cause to believe that someone has violated a domestic violence civil or criminal protection order.

In addition, Ohio civil and criminal protection orders issued in one county are enforceable in any other county in Ohio. Law enforcement officers in any county in Ohio are required to enforce facially valid protection orders issued in any other county in the same way that they would enforce a protection order issued in their own county. In addition, a protection order issued in an Ohio county can be registered in the same court in another Ohio county.

**T. Must Ohio law enforcement agencies and courts enforce domestic violence protection order issued by the courts of other states, and must other states enforce Ohio courts' protection orders?**

Yes. Under the federal [Violence Against Women Act \(VAWA\)](#), Ohio courts must enforce protection orders issued in other states if the other state provided notice and an opportunity for a fair hearing to the abuser. All or nearly all states provide a hearing to alleged domestic violence abusers, thereby making their protection orders enforceable in Ohio. Out-of-state protection orders can also be registered in Ohio courts, but Ohio law enforcement officers must enforce facially valid protection orders regardless of whether they are registered in

an Ohio court. Likewise, domestic violence protection orders issued by Ohio courts are enforceable in other states.

**U. Do LGBT victims and survivors of domestic violence face special challenges?**

Yes. They face both similar and different challenges. The most commonly understood types of domestic violence involve opposite-sex partners, with the female usually being the victim. However, research indicates that domestic violence among same-sex couples occurs at similar rates as domestic violence among straight couples. Studies have found that about one out of four partners in both opposite sex and these studies refute the myth that only straight people — usually women — experience domestic violence.

There are both similarities and differences in the patterns of abuse involving straight and LGBT victims of domestic violence. They share common characteristics:

- The pattern of abuse includes a vicious cycle of physical, emotional, and psychological mistreatment, leaving the victim with feelings of isolation, fear, and guilt.
- Abusers often have severe mental illnesses and were themselves abused as children.
- Psychological abuse is the most common form of abuse and physical batterers often blackmail their partners in the silence.
- Physical and sexual abuse often co-occurs.
- No race, ethnicity, or socio-economic status is exempt.

However, domestic violence in same-sex relationships may differ from domestic violence in heterosexual relationships in other ways:

- LGBT batterers may threaten to “out” their victims to work colleagues, family, and friends. Many LGBT victims are still closeted from friends and family, and co-workers, and have often have few civil rights protections against housing and employment discrimination.
- LGBT victims may be more reluctant to report abuse to legal authorities because doing so would force them to reveal their sexual orientation or gender identity.
- LGBT victims may also be reluctant to seek help because of fear of showing a lack of solidarity among the LGBT community out of a heightened fear that society will perceive same-sex relationships as inherently “dysfunctional.”
- LGBT victims are more likely to fight back than are heterosexual women victims. This could lead law enforcement officers to conclude that the fighting was mutual, overlooking the larger context of domestic violence and the history of power and control in the relationship.
- Abusers can threaten to take away the children the gay or lesbian partners have raised together. This can leave the victim — if not the biological or adoptive parent

— with no legal rights should the couple separate. The abuser can easily use the children as leverage to prevent the victim from leaving or seeking help. Even when the victim is the legally recognized parent, the abuser may threaten to “out” the victim to a social worker hostile to gays and lesbians, which may result in a loss of custody or even loss of contact with the children. In the worst cases, the children can even end up in the custody of the abuser.

Furthermore, victims of domestic violence in same-sex relationships sometimes face additional hurdles. Frequently, law enforcement officers lack adequate knowledge on how to handle domestic violence cases involving people of the same gender. For example, an officer may mistake two males or two females living together as roommates, or may fail to treat or report an incident as domestic violence because the two parties involved were reluctant to disclose their relationship status.

Survivors of same-sex domestic violence may also lack the resources needed to get themselves out of abusive relationships. While domestic violence shelters are increasingly responsive to the needs of lesbian women, gay male victims or transgender victims may not be admitted into the shelters, and other emergency housing options may be unavailable or in short supply. Nevertheless, an increasing number of local domestic violence programs are offering space in safe housing, rooms in existing shelters, or accommodations at hotels for gay and bisexual males.

There are growing resources available to domestic violence victims and same-sex relationships. In central Ohio, the Buckeye Region Anti-Violence Organization (BRAVO) provides comprehensive individual and community programs for survivor advocacy and support within the lesbian, gay, bisexual, and transgender communities. Both straight and LGBT victims of domestic violence may contact the National Domestic Violence Hotline at 1-800-799-7223 or 1-800-787-3224 (TTY), or the Ohio Domestic Violence Network Hotline at 1-800-934-9840, to locate shelters and other help in their area.

For help that is targeted to LGBT victims of domestic violence, contact the National Coalition of Anti-Violence Programs at 212-714-1141 or visit their website at [www.ncavp.org](http://www.ncavp.org), or in Ohio call BRAVO at 1-866-862-7286.

## **Domestic Violence Resources and Forms**

There are several helpful websites with information and resources on domestic violence, stalking, and civil protection orders.

For general information on domestic violence and stalking go to the Ohio DV Resources website at [http://www.ohiolegalservices.org/public/domestic-violence/ohio\\_domestic\\_violence\\_resource\\_center/](http://www.ohiolegalservices.org/public/domestic-violence/ohio_domestic_violence_resource_center/) or the Ohio Domestic Violence Network website at <http://www.odvn.org/>.

For referral to a local legal aid office in Ohio, call 1-866-LAW-OHIO (1-866-529-6446). For referral to a local domestic violence shelter or nonresidential program call the Ohio Domestic Violence Network at 1-800-934-9840 or the Action Ohio Coalition for Battered Women at 1-888-622-9315. If you have limited financial resources, you may be able to obtain free legal advice or assistance from your local legal aid program, the Ohio Domestic Violence Network's Legal Assistance to Victims program, a nearby law school clinic, or a local bar association volunteer lawyer project. (See Chapter 10 on "How to Find a Lawyer.")

You may also get copies of civil protection order (CPO) forms or (fill them out on line), by going to the Supreme Court of Ohio website at [http://www.supremecourt.ohio.gov/JCS/domesticViolence/protection\\_forms/DVForms/default.asp](http://www.supremecourt.ohio.gov/JCS/domesticViolence/protection_forms/DVForms/default.asp)

If you want to prepare your CPO forms by going through a simple online interview, which then automatically generates the completed forms, go to <http://www.ohiolegalhelp.org/legal-forms-information/domestic-violence/#resources>.



## Chapter 9 — Wills and Estate Planning Options

Many unmarried couples fail to do any estate planning — i.e., planning who will get their property after one or both of them die or who will care for their minor children if they die early. But the failure to address these issues can lead to disaster.

### **A. What happens to my property if I don't have a will or some type of trust?**

If you die without a will, Ohio inheritance law (the law of “intestate succession”) determines who will inherit your property. For married couples, all or a large share of one's assets will pass to one's spouse. However, an unmarried partner will not inherit the property from their partner. Instead, your property will pass to your children or grandchildren, or if you have no descendants, to your parents or other next of kin. If you don't have any relatives who can inherit your property, your property will go to the State of Ohio. Your partner will be “left out in the cold.”

The most commonly used estate planning documents are wills, powers of attorney, health care directives, and beneficiary designations for life insurance policies, bank accounts, and investment accounts. Investment accounts include retirement accounts (IRAs, 401(k) and 403(d) retirement accounts, etc.), mutual fund accounts, and other investment accounts. Health care directives include living wills and health care powers of attorney.

Less common estate planning tools include living trusts, testamentary trusts, and various instruments designed to reduce estate taxes upon one's death.

### **B. If I am living with my partner but we are not married, how do I know which property is mine?**

If you have been living together for some time, you and your partner's property may have become mixed together. One approach is to prepare an ownership agreement which designates which property is jointly owned and which property belongs separately to you or your partner. However, such an agreement cannot change the ownership of real estate or any other item (such as a car or recreational vehicle) that has a title document. The named title owner on a deed or auto title is the legal owner, and any change in ownership must be reflected in a name change on the title documents.

Once you figure out which property belongs to each of you or both of you, you should prepare a written list (inventory) of the property. You can then use your property inventory to prepare your respective wills. Although you may acquire more property after you and your partner execute your wills, you should be aware of the nature and extent of your property at the time you make your will.

**C. What can I accomplish with a will? What are the benefits and limitations of passing one’s property under the terms of a will?**

You can leave anything you own to anyone you like, except that if you are married to someone else (other than your cohabiting partner), you cannot disinherit your spouse. Your spouse will be entitled to an elective share of your estate upon your death regardless of the terms of your will.

In addition, you can leave assets that you don’t yet own, but may acquire in the future, to whoever you choose. You can also name the “executor” who will administer your estate and implement your will after you die. Your will can also protect your children by nominating a personal guardian for your children and/or setting up a trust to delay when they receive the assets that pass under your will.

**D. Who can make a will?**

In Ohio, anyone 18 years of age or older and of “sound mind and memory” can make a will. You may be of “sound mind and memory” even if you suffer from a mental illness or impairment. But you must have sufficient mental capacity to understand what a will does, that you are making will, the general nature and extent of property, and the identity of those persons you would normally be expected to provide for, such as your children or other family members. You must also not be so mentally impaired as to be acting under the control (“undue influence”) of someone else.

You and your partner can make separate wills or prepare a joint will, but it could be difficult for you to change the terms of a joint will if you and your partner split up. Under Ohio law, you and your partner can also make a legally enforceable agreement (contract) to make a joint will or to make separate wills with certain terms, such as providing for each other’s children. However, an agreement to make a will may not give you the flexibility you need to make future changes in your estate plan based on changes in your personal circumstances.

**E. What are the required formalities for making a will in Ohio?**

Ohio law requires every will to be in writing, either handwritten or typewritten. The will must be signed by the “testator” — the person making the will — or by someone in his or her conscious presence and at his or her direction. The will must also be signed in the conscious presence of the testator by two or more mentally competent witnesses who saw the testator sign or acknowledge his or her signature on the will. However, the witnesses do not have to sign their names at the same time as the testator, nor in the presence of each other.

You should either have a lawyer prepare your will, or have a lawyer review any will that you have drafted or copied from a commercial form. For persons with limited resources, most Ohio legal aid programs and/or Area Agencies on Aging have an older persons legal

unit or can refer you to an attorney who provides legal assistance in preparing or reviewing basic wills.

**F. Can I choose who will take care of my children after my death by naming that person in my will?**

If you have minor children, you can “nominate” a personal guardian for them in your will. However, your designation in your will of a personal guardian for your children will not supersede the parental rights of the other parent unless that parent has abandoned the child or is unfit. The primary purpose of naming a guardian in your will is to provide for the care of your children if the other parent is no longer alive or available to do so.

If your child’s other parent is still alive, you should, if possible, agree on whom to name as the child’s guardian after you both pass away. Unless there is a conflict, or it is against the child’s best interest, the probate court will normally appoint the person named in your will as the child’s guardian after you die.

**G. What can I do to protect property that may pass to my children under my will while they are still minors and are incapable of managing those assets?**

One important tool is to transfer assets such as money or securities to your children under the Ohio Transfers to Minors Act. Under the Ohio Transfers to Minors Act, the transferred assets are held in the name of an adult “custodian,” who may spend some of the funds for the child’s benefit until the child reaches the age of 21 years. Once the child reaches the age of 21, the assets become the property of the child and the child can use them for any purpose.

Another option is to create a child’s trust in your will or as a living trust. The person you name as trustee of the trust will then manage the assets for your child and may spend trust funds for your child’s education, health and other needs under the terms of the trust. The child’s trust ends at whatever age you designate, and the remaining money is then turned over to your child.

If your child has a serious disability and may become dependent on government benefits, you may want to set up a “special needs trust” to provide financial support to your disabled adult child without affecting the child’s eligibility for Medicaid or other government programs. You should consult with a lawyer to evaluate the pros and cons of establishing such a trust and obtain legal assistance in the preparing the trust documents.

**H. How can I change or cancel my will?**

You may change your will at any time. However, you cannot simply handwrite your changes on your will or cross out certain provisions. You must either revoke (cancel) your will and make a new one, or prepare and add a “codicil” (supplement) to your will. A codicil must meet the same signature and witness requirements as the original will.

You can revoke your will by tearing it up, by making another will stating that you are revoking all previous wills, or by making a separate written declaration that meets the signature and witness requirements for making a will. However, if there are multiple signed copies of your will, it is important to tear up all the earlier versions of your will to avoid having a prior version later filed with the probate court upon your death.

## **I. What happens to my will after I die?**

After you die, your will must be filed with the probate court, usually in the county where you died. Probate is a court proceeding and legal process in which your will is filed, assets gathered, debts and taxes paid, and the remaining property distributed to the beneficiaries named in your will, or, in the absence of a will, to your heirs under the Ohio inheritance laws.

If there is a significant amount of property (over \$100,000), or if someone challenges the validity of the will, a probate proceeding can be a time-consuming and expensive process. The probate costs — attorney fees, court filing fees, and appraisal fees — will usually be taken out of your property and thus reduce the amount received by your beneficiaries. And it will usually take several months — or longer — before your beneficiaries will get their property. Therefore, you may want to use other legal tools to transfer some or all of your assets to your beneficiaries without them having to go through probate court.

## **J. How can I transfer property to my beneficiaries outside of a will and thereby avoid probate?**

The most common methods of transferring property at death while avoiding probate are:

- using a revocable living (inter vivos) trust;
- joint tenancy with a right of survivorship;
- payable-on-death bank accounts, securities and retirement accounts;
- life insurance benefits; and/or;
- transfer of up to two motor vehicles titled in the deceased spouse's name to his or her surviving spouse by the surviving spouse's execution of and presentation to the clerk of the Court of Common Pleas of an affidavit of transfer, provided that the total value of the vehicles does not exceed \$40,000.

You can hold some or all your assets in a revocable living trust. You usually name yourself as the trustee — the person in charge of managing the trust property. You must also name a successor trustee — the person who will distribute the trust property to your beneficiaries after you die. After you set up the living trust, you must legally transfer your property to yourself in your capacity as trustee. While you live, you still effectively own the property held in your living trust and can freely sell, spend or give it away. However, when you die, your successor trustee distributes the remaining assets — including the execution of any necessary deeds — to the named beneficiaries in the living trust. The successor trustee may be — but need not be — one of the named beneficiaries.

Joint tenancy with a right of survivorship is a form of shared property ownership. During their lifetime, the “joint tenants” each own an equal share of the assets. *See Chapter 4, Section I.*

**K. What are my options for directing my health care if I become seriously or terminally ill and am unable to make decisions for myself?**

If you get sick and are unable to make decisions for yourself, your partner will have no legal right to make those decisions for you without a health care directive. Also, if you’re in the hospital, your partner might not have access to any medical information without your health care directive. Your available options for health care directives include a durable power of attorney for health care and a living will. A durable power of attorney for health care appoints a person to make medical decisions for you if you cannot make them for yourself.

If something happens to you and you do not have this document, your partner will not be included in the decision process concerning your health. Your partner may even be denied visitation with you since you are not legally a “family member or relation.”

It is a good idea to prepare both a durable health care power of attorney and a living will. A living will states your wishes if something were to happen to you and you wouldn’t be able to tell the doctor what you wanted. This document should state the circumstances under which you do or do not want your life prolonged. This is important topic to discuss beforehand with your partner to make sure your wishes are carried out.

Free sample forms for a durable healthcare power of attorney in a living will are available from many sources, including but not limited to, the websites for the Ohio State Bar Association and the Ohio Medical Association.

**L. Can I give my partner authority to make financial decisions on my behalf?**

Yes. You can prepare and sign a financial power of attorney giving your partner (or another person) the authority to act on your behalf with respect to your financial affairs, such as receiving and depositing checks, signing their name to checks, paying all bills, handling all bank accounts, CDs, stocks and bonds, and taking possession of or selling any real estate or personal property. A “durable” power of attorney enables that person to act in your place even after you become mentally incapacitated.

## Chapter 10 — How to find an attorney

This self-help manual has addressed a wide range of legal issues. However, even if you study the manual and gain a greater understanding of the law and your available legal remedies, you may need legal advice and/or representation by an attorney to efficiently exercise your legal rights and responsibilities.

### A. What are the pitfalls of representing yourself?

You may be able to successfully resolve your legal problems and navigate the legal system on your own without having to hire or pay for an attorney. But in many situations, a good attorney can make a huge difference in the outcome of your legal matter or case. It is usually wise to explore any existing avenues for obtaining legal advice or representation from an attorney before deciding to proceed **pro se** (without legal representation) in your legal case. Lawyers understand the law, court procedures, and rules of evidence. Non-lawyers may find themselves preparing or filing the wrong papers, missing court deadlines, unable to get key evidence admitted at a court hearing, or misunderstanding the law. Sometimes, laws must be interpreted because a statute is complicated or ambiguous or has never been applied to a particular set of facts. Also, some laws cannot be found in Ohio or federal statutes because such laws are judge-made law, created by court decisions. Judge-made law is often referred to as the “common law” or “case law.”

In short, the law is a very complex web of statutes, rules, and case law. It is impossible for the average person to know and keep up with the frequent changes in all of these areas of law. It is often essential to have an attorney who can interpret the law and advise you. And certain trial skills and knowledge of evidence are required to effectively present or defend a legal case at a trial or court hearing.

### B. How do I find an attorney?

**Finding an Attorney to Pay** — If you can afford an attorney, get attorney names from someone you trust. In Ohio, there is also a telephone lawyer referral service in each metropolitan area and most local bar associations provide lawyer referrals. For a listing of lawyer referral services in Ohio, go to the Ohio State Bar Association’s website at [www.ohiobar.org](http://www.ohiobar.org) or check the yellow pages. In addition to paying an attorney directly, their fees may be paid other ways:

- **“Contingency” or “Fee Shifting”** — An attorney may take your case on a “contingency fee” basis, where she or he only gets paid if you win your case, with money damages recovered from the opposing party. (Contingency arrangements cannot be used in divorce cases or criminal cases.) If your case involves a “fee shifting” statute (such as many consumer protection and civil rights cases), the court may — or in some cases must — order your opposing party to pay your attorney’s fees.

- **Payment Plan, Using Assets from Your Case** — Some attorneys will let you pay them on a payment plan, or with assets that you may get at the end of a case such as cars, homes, etc.

**Evaluating an Attorney’s Qualifications** — Consider factors such as:

- attorney fee arrangements
- level of experience and whether the attorney specializes in the area of law you need
- level of expertise with domestic violence, sexual violence or stalking
- whether your attorney previously represented or advocated for certain parties, such as plaintiffs or defendants, men or women, landlords or tenants, consumers or businesses, etc.
- whether the attorney knows the local judges, court personnel, or other key players in the local court system or relevant government agencies
- If the attorney has been in trouble. You can check disciplinary records at the Supreme Court’s website:  
[https://supremecourt.ohio.gov/AttySvcs/AttyReg/Public\\_AttorneyInformation.asp](https://supremecourt.ohio.gov/AttySvcs/AttyReg/Public_AttorneyInformation.asp).  
 Enter the attorney’s full name and when their record appears, click on their Registration Number, then click on the Discipline or Sanction History button.

**Free Consultations** - Some attorneys will consult with you once for free to evaluate your case. Even if you cannot hire an attorney, you may be able to find someone who will at least consult with you about your case once and provide helpful guidance about next steps.

**Legal Aid** - If you are low income, you may qualify for free legal assistance. Legal aid programs handle only certain types of cases because of their limited resources and case priorities. For contact information for your local legal aid program or office, call 1-866-LAW-OHIO (1-866-529-6446), or go to the Ohio Legal Services website at: <http://www.ohiolegalservices.org/programs>.

**Court Appointed Attorneys** - If you are a defendant in a criminal case or a parent in a child abuse, neglect, or dependency case filed by children’s services, and you cannot afford an attorney, **you are entitled to a court-appointed attorney**. Ask the court for the attorney at your first opportunity; don’t wait until your first court appearance.

**Bar Associations** - In larger cities, your local bar association may operate a volunteer (free) lawyer project. To find the closest bar association, go to [www.ohiobar.org](http://www.ohiobar.org).

**Crime Victims compensation (CVC) for Protection Order Cases** - The CVC program in Ohio — under specific conditions — can pay your attorney fees for Protection Orders.

**Law School Clinics** - See chart below. Eligibility guidelines and case acceptance priorities may change; contact clinic sponsors for current information.

|                                  |  |  |
|----------------------------------|--|--|
| <b>Allen and Hardin Counties</b> | <b>Ohio Northern University</b><br>(419) 227-0061        | Help with family law cases (divorce, etc.)<br>For details: <a href="http://www.law.onu.edu/academics/clinical-programs">www.law.onu.edu/academics/clinical-programs</a>  |
| <b>Akron</b>                     | <b>University of Akron</b><br>(330) 972-7462             | Help with domestic relations and other family law matters, expungement, clemency, and Certificates of Qualification for Employment.<br>For details: <a href="https://www.uakron.edu/law/curriculum/clinical.dot">https://www.uakron.edu/law/curriculum/clinical.dot</a>                                    |
| <b>Cleveland</b>                 | <b>Case Western Reserve University</b><br>(216) 368-2766 | Help with contractor disputes, debt collection, Social Security appeals, and criminal defense.<br>For details: <a href="http://law.case.edu/Academics/Experiential-Education/Milton-A-Kramer-Law-Clinic-Center">http://law.case.edu/Academics/Experiential-Education/Milton-A-Kramer-Law-Clinic-Center</a> |
| <b>Columbus</b>                  | <b>Capital University</b><br>(614) 236-6779              | Help with Protection Orders, divorce cases involving domestic violence and no children, contested custody cases involving domestic violence, wills and related documents, tenants' rights.<br>For details: <a href="http://law.capital.edu/Legal_Clinic/">http://law.capital.edu/Legal_Clinic/</a>         |
| <b>Cincinnati</b>                | <b>University of Cincinnati</b><br>(513) 241-9400        | Help with Civil Protection Orders<br>For details: <a href="https://www.law.uc.edu/clinics">https://www.law.uc.edu/clinics</a>  |
| <b>Dayton</b>                    | <b>University of Dayton</b><br>(937) 229-3817            | Help with misdemeanor criminal defense, civil matters, and some family law.<br>For details: <a href="https://udayton.edu/law/academics/clinics/index.php">https://udayton.edu/law/academics/clinics/index.php</a>  |
| <b>Toledo</b>                    | <b>University of Toledo</b><br>(419) 530-4236            | Help with child custody, child support and other domestic violence-related issues, housing, immigration, social security, and contracts.<br>For details: <a href="http://www.utoledo.edu/law/academics/clinics/">http://www.utoledo.edu/law/academics/clinics/</a>   |



## APPENDIX

### A. SAMPLE COHABITATION AGREEMENT

#### LIVING TOGETHER

#### SAMPLE COHABITATION AGREEMENT

The following form is intended for illustrative purposes only. You and your attorney can use this sample as a guide in drafting a cohabitation agreement that best protects your interests and complies with the laws in effect where you live.

\_\_\_\_\_, Cohabitant No. 1, and \_\_\_\_\_,  
Cohabitant No. 2, hereinafter jointly referred to as the Cohabitants, who now live/will (circle one) live together in the future at \_\_\_\_\_, in the city of \_\_\_\_\_, county of \_\_\_\_\_, state of \_\_\_\_\_, hereby agree on this \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, as follows:

1. The Cohabitants wish to establish their respective rights and responsibilities regarding each other's income and property and the income and property that may be acquired, either separately or together, during the period of cohabitation.
2. The Cohabitants have made a full and complete disclosure to each other of all their financial assets and liabilities.
3. Except as otherwise provided below, the Cohabitants waive the following rights:
  - a. To share in each other's estates upon their death.
  - b. To "palimony" or other forms of support or maintenance, both temporary and permanent.
  - c. To share in the increase in value during the period of cohabitation of the separate property of the parties.
  - d. To share in the pension, profit sharing, or other retirement accounts of the other.
  - e. To the division of the separate property of the parties, whether currently held or hereafter acquired.
  - f. To any other claims based on the period of cohabitation of the parties.
  - g. To claim the existence of a common-law marriage.
4. [SET FORTH RELEVANT EXCEPTIONS HERE. For instance, if both cohabitants are contributing to the debt repayment on the home owned by one party, they may agree that any increase in equity during the period of cohabitation will be fairly divided between them.]

5. The Cohabitants agree to divide the household expenses as follows:

**Monthly Expenses**

**Cohabitant No. 1**

**Cohabitant No. 2**

Rent or Mortgage \$ \_\_\_\_\_ \$ \_\_\_\_\_  
\$ \_\_\_\_\_ \$ \_\_\_\_\_

**Utilities:**

Telephone \$ \_\_\_\_\_ \$ \_\_\_\_\_

Gas \$ \_\_\_\_\_ \$ \_\_\_\_\_

Electricity \$ \_\_\_\_\_ \$ \_\_\_\_\_

Water & Sewer \$ \_\_\_\_\_ \$ \_\_\_\_\_

Garbage Collection \$ \_\_\_\_\_ \$ \_\_\_\_\_

Cable Television \$ \_\_\_\_\_ \$ \_\_\_\_\_

Cellular Phone \$ \_\_\_\_\_ \$ \_\_\_\_\_

Internet Service \$ \_\_\_\_\_ \$ \_\_\_\_\_

Property Taxes \$ \_\_\_\_\_ \$ \_\_\_\_\_

**Insurance:** \$ \_\_\_\_\_ \$ \_\_\_\_\_

Homeowners/Renters \$ \_\_\_\_\_ \$ \_\_\_\_\_

Auto(s) \$ \_\_\_\_\_ \$ \_\_\_\_\_

Recreational Vehicle \$ \_\_\_\_\_ \$ \_\_\_\_\_

**Debt Payments:** \$ \_\_\_\_\_ \$ \_\_\_\_\_

Vehicle #1 \$ \_\_\_\_\_ \$ \_\_\_\_\_

Vehicle #2 \$ \_\_\_\_\_ \$ \_\_\_\_\_

Home Equity Loan \$ \_\_\_\_\_ \$ \_\_\_\_\_

Other Loans \$ \_\_\_\_\_ \$ \_\_\_\_\_

Credit Card #1 \$ \_\_\_\_\_ \$ \_\_\_\_\_

Credit Card #2 \$ \_\_\_\_\_ \$ \_\_\_\_\_

Credit Card #3 \$ \_\_\_\_\_ \$ \_\_\_\_\_

Day Care \$ \_\_\_\_\_ \$ \_\_\_\_\_

**Transportation Expenses:** \$ \_\_\_\_\_ \$ \_\_\_\_\_

Gasoline \$ \_\_\_\_\_ \$ \_\_\_\_\_

Parking/Commuting \$ \_\_\_\_\_ \$ \_\_\_\_\_

Vehicle Maintenance \$ \_\_\_\_\_ \$ \_\_\_\_\_

Licenses \$ \_\_\_\_\_ \$ \_\_\_\_\_

**Food:**

|                |          |          |
|----------------|----------|----------|
| Groceries      | \$ _____ | \$ _____ |
| Take-out Food  | \$ _____ | \$ _____ |
| Restaurants    |          |          |
| School Lunches | \$ _____ | \$ _____ |

**Household Expenses:**

|                   |          |          |
|-------------------|----------|----------|
|                   | \$ _____ | \$ _____ |
| Cleaning Supplies | \$ _____ | \$ _____ |
| Cleaning Service  | \$ _____ | \$ _____ |
| Yard Maintenance  | \$ _____ | \$ _____ |
| Home Maintenance  | \$ _____ | \$ _____ |
| Home Security     | \$ _____ | \$ _____ |
| Home Improvements | \$ _____ | \$ _____ |
| Home Furnishings  | \$ _____ | \$ _____ |
| Appliances        | \$ _____ | \$ _____ |

**Personal Expenses:**

|                |          |          |
|----------------|----------|----------|
| Entertainment  | \$ _____ | \$ _____ |
| Travel         | \$ _____ | \$ _____ |
| Gifts          | \$ _____ | \$ _____ |
| Hobbies        |          |          |
| Babysitting    | \$ _____ | \$ _____ |
| Pet-care Costs | \$ _____ | \$ _____ |
| Donations      | \$ _____ | \$ _____ |

**Other Expenses:**

|          |          |
|----------|----------|
| \$ _____ | \$ _____ |
| \$ _____ | \$ _____ |
| \$ _____ | \$ _____ |

**TOTAL EXPENSES:** \$ \_\_\_\_\_ \$ \_\_\_\_\_

6. [ADDITIONAL PROVISIONS HERE. These can cover just about any issue, from custody of pets to allocating household chores. The legal obligation to pay child support to any children of the Cohabitants cannot, however, be modified by agreement of the parties.]
7. Each Cohabitant is represented by separate and independent legal counsel of his or her own choosing.
8. The Cohabitants have separate income and assets to independently provide for their own respective financial needs.

9. This agreement constitutes the entire agreement of the parties and may be modified only in a writing executed by both Cohabitants.
10. In the event it is determined that a provision of this agreement is invalid because it is contrary to applicable law, that provision is deemed separable from the rest of the agreement, such that the remainder of the agreement remains valid and enforceable.
11. This agreement is made in accordance with the laws of the state of \_\_\_\_\_, and any dispute regarding its enforcement will be resolved by reference to the laws of that state.
12. This agreement will become null and void upon the legal marriage of the Cohabitants.

**I HAVE READ THE ABOVE AGREEMENT, I HAVE TAKEN TIME TO CONSIDER ITS IMPLICATIONS, I FULLY UNDERSTAND ITS CONTENTS, I AGREE TO ITS TERMS, AND I VOLUNTARILY SUBMIT TO ITS EXECUTION.**

\_\_\_\_\_  
Cohabitant No. 1

\_\_\_\_\_  
Cohabitant No. 2

Witnessed by:

\_\_\_\_\_  
(Witness or counsel signature)

\_\_\_\_\_  
(Witness or counsel signature)

[NOTARY PUBLIC MAY AFFIX STAMP HERE]

**B. Sample Joint Agreed Entry Granting Shared Custody**

**IN THE COURT OF COMMON PLEAS FRANKLIN COUNTY, OHIO  
DIVISION OF DOMESTIC RELATIONS  
JUVENILE DIVISION**

*In the matter of Shared Custody of CHILD(REN) :*

MINOR CHILD, : CASE NO.  
BIO MOM : JUDGE  
PETITIONER, : MAGISTRATE  
and :  
NON-BIO MOM :  
PETITIONER. :

**JOINT AGREED ENTRY GRANTING SHARED CUSTODY OF  
CHILD(REN) TO PETITIONERS, BIO MOM AND NON-BIO MOM**

Upon Joint Petition of the Petitioners, Bio Mom and Non-Bio Mom, and for good cause shown, the Court finds as follows:

1. Petitioner, Bio Mom, is the legal mother of the minor child, Child(ren), born Date of Birth; the child has no legal father.
2. Each Petitioner believes that the establishment of the mutual rights and responsibilities associated with shared custody of Child(ren) as further described in this Agreed Entry is in the best interest of the minor child.
3. Petitioner Bio Mom and Petitioner Non-Bio Mom acknowledge that each are proper and suitable persons to care for the minor child and that each are entering into this Agreed Entry voluntarily, and with full knowledge and understanding of all rights and responsibilities assigned herein.

4. Each Petitioner has the responsibility, financial and otherwise, to train and educate the minor child, and each is willing to, and desires to share with the other Petitioner legal decision-making and parenting rights and responsibilities for the minor child. Petitioners desire that they be treated in the law as two (2) equal custodians of their minor child, the same as they would be treated under the law if they were any other two (2) unmarried custodians of a child.

5. Both Petitioners reside together with the minor child, and have since Petitioner Bio Mom gave birth to Child(ren). They have acted as the minor child's co-custodians at all times since the child's birth.

6. If Petitioner Bio Mom should die or become so disabled as to be unable to be the parent of the minor child, the minor child would be without another legal custodian; Petitioner Bio Mom expresses her continuing desire that in that event, Petitioner Non-Bio Mom be permitted to adopt the minor child, Child(ren), and to act as the minor child's legal custodian and guardian.

The Petitioners represent to the Court that Petitioner, Bio Mom, has made provision in her Will to designate Petitioner Non-Bio Mom as the minor child's guardian in the event of her death, and until such time as her adoption of the minor child might be accomplished.

7. Both Petitioners agree to accept the legal obligation of support for the minor child, pursuant to R.C. 2151.23 (B)(4), and both Petitioners agree to accept the jurisdiction of this Court at this time in awarding them shared custodial status as to the minor child, and as to any dispute that may in the future arise between the Petitioners regarding the custody of and companionship with the minor child.

8. Petitioner Bio Mom agrees that she will take no action to undermine the terms of the underlying obvious intention of sharing custody with Petitioner Non-Bio Mom; Petitioner Bio Mom agrees not to participate in or give consent as a part of any adoption proceeding that may

involve Child(ren) other than an adoption by Petitioner Non-Bio Mom, and in the event that any person other than Petitioner Non-Bio Mom seeks to adopt Child(ren), Petitioner Bio Mom shall ensure that Petitioner Non-Bio Mom receives full notice of such proceeding and that Petitioner Non-Bio Mom's relationship with Child(ren) will be legally maintained.

9. Both Petitioners have agreed and represent to this Court that in any dispute that may arise between them in the future, neither Petitioner shall use any legal connection to the minor child in order to seek or obtain any advantage in custody, companionship, or contact with the minor child in the event that the Petitioners cease to reside together.

Rather, in the unlikely event the Petitioners cease to reside together or either initiates action in this Court, each has committed to use her best effort to (1) cooperate with the other in maintaining close and loving relationships with both Parties, (2) cooperate in all major decision making affecting the health and welfare of the minor child, and (3) focus at all times on the best interest of the minor child rather than their own personal wishes.

10. This Court has jurisdiction to determine custody of the minor child pursuant to R.C.2151.23 (A)(2), and to determine support of the minor child pursuant to R.C. 2151.23 (B)(4), and it is in the best interest of the minor child that the custody, visitation, and support rights of the Petitioners and the minor child be determined.

11. This Court takes judicial notice that minor children generally benefit from having more than one adult who is legally responsible for their care; the establishment of a shared custody relationship permits another adult designated by the sole legal parent to form with the child a special relationship that is protected from undue interference, and also permits the child to accept and rely on that nurturance and support.

Based on that judicial notice and the representations made by the parties, this Court finds that the establishment of shared custody further protects the relationship that has developed and is expected to continue to develop over time between the child and Non-Bio Mom, so that the child may legitimately rely on the benefit of ongoing nurturance and support from Non-Bio Mom whether or not the Petitioners continue to reside with each other in the future; similarly, the establishment of shared custody permits both Bio Mom and the child to rely on the continuation of that custody, along with its attendant rights and responsibilities in the event that Bio Mom dies or becomes incompetent to act as her parent during the mother's lifetime.

For all the foregoing reasons, it is hereby **ORDERED** that:

1. Petitioners, Bio Mom and Non-Bio Mom, are awarded shared custody of the minor, Child(ren), and they shall be treated in the law as nearly as possible in the same manner and with the same breadth and nature of rights and responsibilities as if they were unmarried parents of the child.

The establishment of shared custody for Child(ren) shall not, however, be interpreted to establish or imply any different relationship between the Petitioners themselves than the relationship they have without reference to this Agreed Entry.

2. Petitioners, Bio Mom and Non-Bio Mom, are hereby **ORDERED** to provide health insurance coverage for the minor child for so long as the same is available to either of them at reasonable cost through their employment.

The cost of providing health insurance for the minor child, the uninsured cost of all medical expenses for the minor child, and all other expenses incurred on behalf of the child, shall be allocated by and between the Petitioners as they may determine, subject to further Order of this Court upon Motion of either Custodian.



3. For so long as the Petitioners continue to reside together with the child, or until further Order of this Court on motion of either Petitioner, (regardless of continued shared residence) Petitioners shall share time or have separate time with the minor child as they may determine from time to time.

However, in the unlikely event that Petitioners cease to reside together, it is their current intention to allocate time with the minor child between them in substantially equal proportions, except as they may otherwise agree, or as is further ordered by this Court upon a determination of the best interest of the child; until such time as the Parties agree or the Court otherwise orders, the parenting schedule shall be, at a minimum, the schedule set forth in the Court's local rules.

4. Petitioners shall take no action to undermine the terms and underlying obvious Intention of sharing custody of Child(ren) between the two Petitioners and only the two Petitioners; neither Petitioner may participate in or give consent as a part of any adoption proceeding or any other custody proceeding that may involve Child(ren) (other than an adoption by Petitioner Non-Bio Mom), and in the event that any person other than Petitioner Non-Bio Mom seeks to adopt Child(ren), Petitioner Bio Mom shall ensure that Petitioner Non-Bio Mom receives full notice of such proceeding and that Petitioner Non-Bio Mom's relationship with Child(ren) will be legally maintained.

5. The Court passes on any award of child support from either Petitioner to the other, subject to further orders as may be issued in appropriate circumstances upon further motion of either Petitioner.

6. This ORDER of shared custodial status is intended to define rights and responsibilities for each Petitioner as to the minor child for whom Petitioner Bio Mom is the legal

parent and custodian but for whom Petitioner Non-Bio Mom is also now to be considered a shared custodian as a result of the agreement of the Petitioners and their application to this Court, and does not in any way terminate Petitioner Bio Mom's legal status as parent and custodian of the minor child.

The shared custodial rights of Petitioners, Bio Mom and Non-Bio Mom, shall include, but not be limited to, the following:

- a. The right for either Petitioner to obtain medical records, seek medical care, and make any required medical decisions for the minor child, to authorize or refuse to authorize any medical treatment, and to submit claims for any covered medical treatment to the minor child's insurance provider;
- b. The right for either Petitioner to receive and/or obtain school records regarding the minor child;
- c. The right for either Petitioner to enroll the minor child in school and for either Petitioner to give effective permission for the minor child to do anything whatsoever and/or to participate in any activity, whether for school, church, community organization, or for any other purpose;
- d. The right for either Petitioner to deliver the minor child to and pick the minor child up from any school or child care facility, program, or provider, or activity, as is considered appropriate for custodians; and
- e. The right for either Petitioner to have access to, or participation in, the minor child's educational, religious, and community activities as are appropriate for custodial involvement.

The Petitioners shall use their best efforts to reach mutual decisions regarding the minor child's residence, support, companionship, and education, taking into consideration the wishes of the minor child, and keeping foremost the best interest of the minor child.

If the Petitioners are unable to reach a mutually agreeable decision regarding any aspect of the child's upbringing, they shall use their best good faith efforts to resolve their disagreements and reach a mutually agreeable decision through counseling and/or mediation with a therapist or mediator acceptable to both Petitioners, prior to either Party seeking the Court's intervention in any dispute, with the expense of the therapist or mediator to be shared between the Petitioners in proportion to the Petitioners' respective incomes.

If, however, the Petitioners are unable to resolve their differences after such counseling or mediation, and/or cannot agree to a therapist or mediator, then neither Petitioner is precluded from proceeding to Court as if that prerequisite has been met.

This Court shall have continuing jurisdiction over the custody, companionship, and support of the minor child, if invoked by either custodian, until such time as the minor child attains age eighteen (18), or so long as the minor child continuously attends any recognized and accredited high school, whichever last occurs.

**IT IS SO ORDERED.**

*Signature page attached.*  
\_\_\_\_\_  
**JUDGE**

**APPROVED:**

\_\_\_\_\_  
*Bio Mom, Petitioner*

