



Co-Habitation Rights

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In Scotland nearly 200,000 people now live with a partner, but for many reasons, choose to live together rather than enter into a marriage or civil partnership.

This can be because one or both of them cannot legally marry. Many couples live together almost as a "trial marriage", whilst others don't want to marry for other reasons.

Previously no legal rights arose out of this type of arrangement, but the Family Law (Scotland) Act 2006 changed this.

The 2006 Act provides "co-habitants" with various legal rights. The Act defines a "co-habitant" as a person who is, or was, living with another person as if they were husband and wife, or two persons of the same sex who are or were living together as if they were civil partners.

The length of period during which the parties have lived together, the nature of the relationship and existence of any financial arrangements between the couple are relevant considerations.

The 2006 Act is only applicable to relationships which end, through separation or death, after May 2006. What rights are provided by the Act?

In the event that a co-habiting couple separate, either co-habitant has the right to apply to court for an order for payment of a capital sum for his/her own benefit, if there has been an economic disadvantage suffered by the party claiming or an economic advantage enjoyed by the party against whom the claim is made. If there is a child of the relationship, an order can be sought to meet the burden of child care.

The claim must be made within one year of the couple's separation. The court does not have any discretion to extend the one year time limit set down by the Act.

Following the death of a co-habitant, the surviving co-habitant can claim rights of inheritance if his/her partner died without making a will. Such a claim must be made within six months of the death of the co-habitant. Again, the court has no discretion to extend the six month time period.

Because of this, if a co-habitant wants their partner to benefit from their estate, it is very important that a will is written in his/her favour as soon as possible.

In order to avoid disputes arising in relation to the ownership of property in the event of a relationship breaking down, it is possible to enter into a Minute of Agreement between co-habitants. This document will set out how the couple intend to divide their property, should they ever separate.

If a property is to be purchased with a prospective co-habitant, and there have been unequal contributions towards the purchase of the property, it is important to consider having a legal document prepared to record how the funds will be divided in the event of the sale of the property.

People might consider having a formal agreement as a negative step at the beginning of the relationship. However, given the changes to the law, it makes sense to consider this option.

Having this type of document in place can reduce the stress and perhaps avoid the legal costs which might be incurred in unravelling a couple's affairs, should the relationship come to an end. It also encourages openness and honesty between the parties to the relationship in relation to their finances from outset.

And....all being well, the requirement to have regard to this type of agreement will never arise!



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