



CompleteClarity[®]
SOLICITORS



simplicitylegal

Cohabitation Law in Scotland

In Scotland, Cohabitants (see below) do not have the same rights as married couples or those in civil partnerships and it is important not to assume that things will be treated the same. However, the law does provide some rights for cohabitants in the event of separation or death or, alternatively, there are some measures you can take to make things clearer.

What are cohabitants?

Cohabitants are couples who live together as though husband and wife or civil partners (which is where your relationship is legally registered). There is nothing formal which has to be done to register or confirm a cohabitation- whether you are a cohabitant is a matter determined by the factual circumstances. For example, the law does not provide how long a couple must have lived together for before they would be classified as cohabitants.

If parties are in dispute about whether they are cohabitants, then the Courts will consider the length of the relationship, the nature of that relationship and what the financial arrangements are between the parties.

'Common law' Spouses

It is a common misconception that there is a form of marriage where the parties may be a 'common law husband' or 'common law wife' and is typically applied to circumstances where the parties live together but have not undergone any legal process to recognise the relationship. However, in Scotland currently there is no such thing as a common law spouse. Instead, parties who find themselves in these circumstances are most likely to be deemed cohabitants and the law on cohabitants applies.

A Financial Claim upon Separation

The law provides that a cohabitant can make a financial claim upon the cohabiting relationship ceasing. If you believe that you have a financial claim against your ex-partner then you must make that claim within 12 months of the date of separation. The court may order a capital (lump) sum to be paid, or alternatively, they can order that payments are to be made by one party to the other in instalments.

When considering whether a financial award should be made, the Court has to be satisfied that the cohabitant who is making a claim has suffered an economic disadvantage, and their partner has suffered a corresponding economic advantage as a result of contributions by the cohabitant making the claim.

When considering whether to make an award, an economic disadvantage is not restricted to financial contributions only. The court will also consider non-financial contributions such as maintaining the home, raising children, giving up a career in order to support their partner or assisting with the business interests of their partner. Financial contributions can also be considered such as paying more towards the home, for the purchase or for home improvement, and also investing in a business interests or solely owned property.

It is important to note that it is not in every case that a claim can be made and it is not the case that, in the event of a separation, one person must make payment to the other or that the Court will automatically make an award.

A claim does not need to be made through the courts, you can try and negotiate with your partner and reach an agreement however, if you are unable to reach an agreement then the court action must be raised within **12 months** of the date of separation or it will be what is known as 'time-barred' and you will have lost the ability to claim any monies via the court.

A Financial Claim upon Death

Where your cohabiting partner dies and they have left a Will then even if the Will either does not make provision for you or does not provide what you wish there is no way to claim against the Estate and the terms of the Will will be followed unless all parties included in the Will agree otherwise.

However, in circumstances where your cohabiting partner dies and they have not left a Will (known as dying intestate) then you have the right to make a claim against your partner's Estate. This can only be made where your partner was domiciled in Scotland and you lived together as at the time of their death.

There are strict time limits in order to make such a claim or raise court proceedings for a claim of that nature. If matters cannot be resolved within the estate and a Court order is needed then the application must be made to the court within **6 months** of the death of your partner. If you do not claim in this time then the claim will be time-barred and there is no option to then claim.

The types of order that a court can make are an order for a capital (lump) sum or for the transfer of property. When considering a claim, the Court will consider the value of the net estate of your partner and whether you have received any other benefit such as death benefits from your partner's pension. The court will also consider the nature and extent of any other claims that are made. For example, children have an automatic legal rights claim to inherit from their parents' estate and this will be taken in to account by the Court.

Again, there is nothing automatic about making such a claim and each case is decided by the Court on its individual merits.

Household Goods and Other Property

Where a question arises about the ownership of household goods (where these are any goods (including decorative or ornamental goods) kept or used at any time during the cohabitation in any residence in which the cohabitants are (or were) cohabiting for their joint domestic purposes; but does not include money; securities; any motor car, caravan or other road vehicle; or any domestic animal) then these are presumed to be owned jointly. However, this is simply a presumption and, if specific ownership can be established, then it will fall to be owned by that individual.

In terms of household expenditure, if both parties make contribution to joint household expenses then any money collected for that purpose or any property (that is not a residence) acquired with those funds is deemed to be jointly owned. This however is subject to there not being any agreement to the contrary.

How can you make things more certain?

The law in relation to Cohabitants can be unclear and is heavily reliant on the facts and circumstances of each individual case. There are however two ways that we can help provide you and your partner with a little more certainty should the worst happen. These are:

1. A Cohabitation Agreement; and or
2. A Will

Cohabitation Agreement

A cohabitation agreement is essentially a contract between cohabitants. It is typically entered in to immediately prior to the cohabiting relationship commencing or during the cohabitation itself. The purpose of the cohabitation agreement is to make clear what is to happen in certain circumstances, for example on the death of one of the cohabitants or in the event of a separation. It can however also regulate things like payment of joint expenses or ownership right of certain items. It is a heavily bespoke document but one which can provide absolute certainty to you and your partner.

Will

A will is a document which sets out what is to happen to everything belonging to you (your estate) on your death. As outlined above, if you are in a cohabiting relationship and you do not have a will then this can be far from certain. In drawing up a Will we can consider what you would want to have happen and ensure measures are put in place to ensure that will be the case.

The information and opinions contained in this blog are for information only. They are not intended to constitute advice and should not be relied upon or considered as a replacement for advice. Before acting on any of the information contained in this blog, please seek specific advice from Clarity Simplicity Ltd.



CompleteClarity[®]
SOLICITORS

Clarity Simplicity Ltd.
34 Woodlands Road
Glasgow
G3 6UR

0141 433 2626

legalteam@claritysimplicity.co.uk



simplicitylegal