

Cohabitation Agreements

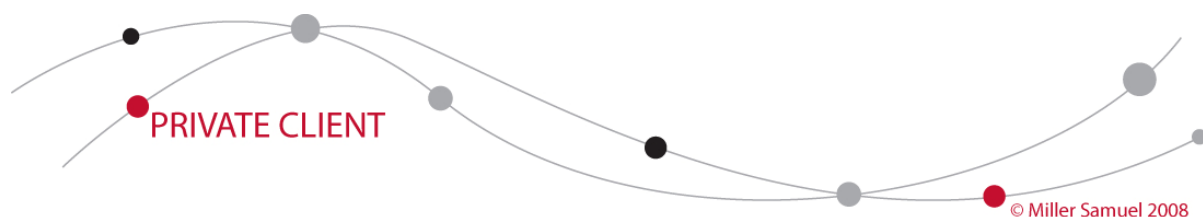
In recent times there has been a significant increase in the number of people choosing to live together rather than marry. The Family Law (Scotland) Act 2006 which came into force on 4th May 2006 created a new legal framework for partners cohabiting without having married or, where they are same sex partners, without having entered into a civil partnership. Whilst the Act has not put such cohabiting couples on the same legal footing as married couples or civil partners it has created significant legal rights and obligations for such couples.

The rights available under the Act are available to couples only where they separate after 4th May 2006. "Cohabitant" is defined in the Act as a person living with another person as if they were husband and wife or in a relationship which has the characteristics of a relationship between a husband and wife except that the persons are of the same sex.

The main rights created under the Act are set out briefly below:

- Rights on death. If one cohabiting party dies without leaving a will the other party may, within six months of the date of death, apply to the court for a payment out of the deceased's estate.
- Rights to financial provision on the termination of the relationship. One party may make a claim against the other for payment of a sum of money within a period of one year from the end of the cohabitation period. Examples would be where the claimant had paid or contributed towards mortgage payments or other household expenses on the property where the parties cohabited but such property was owned solely by the non claimant party or where the claimant had given up work to look after a child during the period of cohabitation.
- Rights to a payment in respect of the cost of looking after a child. In addition to a claim for recurring child support payments (which was already open to a cohabiting party prior to the Act coming into force) a claim may also be made for payment of a one off capital sum to assist with the financial burden of looking after a child.

The Act has significantly extended the proportion of the population whose relationships, or rather the break up of whose relationships, are governed by legislation. In many cases the parties to the relationship will be unaware of the significance of the legislation and will not be aware that their partner has a potential financial claim against them in the event of the relationship ending or, in the event of their death, a potential claim against their estate.



It is strongly recommended that cohabiting parties, or those about to move in together, give serious consideration to entering into a Cohabitation Agreement. This is particularly the case where they are purchasing a property together but are making unequal contributions towards the purchase price. Such an agreement allows the parties to record clearly and unequivocally any sums of money they have contributed to the price, whether one or both of them will be meeting the mortgage payments, the liability the parties have for existing debts, how the sale proceeds of the property should be divided should the parties separate and any other matters relevant to their specific circumstances. A Cohabitation Agreement may also provide for the parties to “contract out” of any claims they have against each other in the event of their separation or against each other’s estate in the event of the death of one the parties.

There may, very understandably, be a reluctance on the part of some people to discuss such matters in the early stages of a relationship much less enter into a legally binding agreement on them. The downside of this however is that people may find they have left themselves open to a financial claim they had not anticipated and would not voluntarily have incurred. Parties may end up being involved in an expensive and stressful court action which may have been avoided had a Cohabitation Agreement been in place.

For further information in relation to these issues please contact any member of our Private Client Department on 0141 221 1919.

