

# THE LEGAL RIGHTS OF THE “COMMON LAW SPOUSE”

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Is your partner living with you in your home? Have you been in a committed relationship for longer than five years? If so, are you aware that under new legislation, you may be ordered by a Court to make maintenance payments to your partner in the event of a break up regardless of the fact that you never married.

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 came into force on the 1<sup>st</sup> of January, 2011. It was well publicised at the time as it brought about an historic change for same sex partners in that the law finally allowed same sex couples to apply to the Civil Registrar to enter into a Civil Partnership.

However, the Act is twofold in that it also introduced rights and obligations on cohabiting couples both opposite sex and same sex. This half of the act didn't seem to get as much publicity.

Cohabitants range from young couples living together who intend to marry sometime in the future to older couples who are unwilling to enter into a marriage. Under the Act, a cohabiting couple must have lived together in an intimate and committed relationship for five years and two years if the couple have children together. The Act introduces a Cohabitation Redress Scheme which offers protection to the financially dependent person in the relationship should it end due to a break up or death.

This Act has had far reaching consequences for over 120,000 cohabiting couples. Where relationships breakdown, qualifying cohabiting couples are now open to maintenance and property claims quite similar to those arising following a marriage break-up, even where there are no children involved. Couples getting married expressly consent to accepting legal obligations to each other. Cohabitants often opt not to get married for the sole purpose of avoiding such legal implications. However, those cohabitants who qualify under the Act, may now find themselves with similar legal obligations as a married couple.

On the breakdown of a cohabiting relationship, the person in the relationship who is financially dependent on the other cohabitant can make an application to Court for redress. If the Court is satisfied that he or she is financially dependent on the other



cohabitant and that the dependence arises from the relationship or the ending of the relationship, the Court may make a number of orders such as a Property Adjustment Order where it may award a portion of the other cohabitants property to the dependent party, a Pension Adjustment Order where the Court can allow the dependent cohabitant apply for a portion of the other parties pension or a Maintenance Order where the Court will apply a lump sum payment to the dependent cohabitant or alternatively order a periodical maintenance payment from the other party. Any such proceedings must be issued within two years of the relationship ending.

A qualified cohabitant can also apply to Court to receive financial support from the estate of a deceased cohabitant if the Court is satisfied that the deceased cohabitant failed to provide financially for the surviving cohabitant. Such applications must be made to the Court not more than six months after the Grant of Probate issues.

The Court, in making such orders will take into account a number of points including the financial circumstances of each party, the length of the relationship, the financial contributions made by each party and the contributions made by each party in looking after the home.

If you and your partner wish to opt out of the entitlements under the Act should you break up, then a Cohabitation Agreement can be signed. The Act specifically provides for the legal recognition of Cohabitation Agreements. Such Agreements will only be valid if it is in writing and signed by both parties and such Agreements may protect the assets in your sole name in the event of your relationship breaking down.

Should you have any queries regarding this article or should you wish to enter into a Cohabitation Agreement, please feel free to contact Jacquelyn on 086 1617418 to make an appointment.

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