

Unmarried Couples Living Together- What are your Legal Rights?

By Enda O'Connor, solicitor, with O'Connor O'Dea Solicitors, Newcastle West

The Civil Partnership Act, 2010 came into force on the 1st January, 2011. Essentially this enactment has two strands. The first strand of the Act deals with Civil Partnerships of same-sex couples and the second strand of the Act confers rights and duties on co-habiting couples. This piece will concentrate on the latter.

What are my rights?

The new act provides for a **Cohabitation Redress Scheme CRS** which offers protection to a financially dependent person if the cohabiting relationship ends, whether due to relationship breakdown or perhaps death. The Act also introduces "cohabitation agreements" allowing cohabitants to manage their joint financial and property affairs.

Are you a Co-habiting couple?

To qualify as a co-habiting couple you must have lived together with your partner in an intimate and committed relationship for 5 years or 2 years where the parties have a child together. The final qualifying factor is that the party applying to the **CRS** must be financially dependent on the other party. A co-habiting couple may be a same sex couple or an opposite sex couple.

Am I not already a "Common Law Wife" or Common Law "Husband"?

Prior to the Civil Partnership Act there was no law in the Irish jurisdiction that made provision for the status of cohabiting couples or for any financial or property relief following the breakdown or end of their relationships. Unlike married couples, cohabiting couples, up until now, had no claim to any property owned by their partner.

The Acts offers qualified co-habitants who feel short changed or hard done by at the end of a long-term relationship a right of action. The end of the relationship can be brought about by a break-up or by bereavement.

Are these Co-habitation Rights automatic?

It is critical to remember that these rights and entitlements are not automatic. The Court has wide discretionary powers and will consider each case individually on its merits. If the Court is satisfied that the individual making the application is entitled to redress then in making an Order the Court will generally consider:

1. The needs, responsibilities and obligations of the co-habitants;
2. Contributions made by the co-habitants;
3. Financial circumstances of the parties;
4. Degree of financial dependency of one party on another;
5. Duration of the relationship;
6. Children;
7. Earning capacity of parties

8. Conduct of both parties

The Court has the power to make various Orders for cohabiting couples such as Property Adjustment Orders, Compensatory Maintenance Orders, Pension Adjustment Orders and an Application for provision from the estate of a deceased cohabitant (Where the deceased has failed to make adequate provision for their surviving co-habiting partner).

Can I make sure my partner does not acquire these rights?

Yes. The Act also introduces "cohabitants' agreements" to provide for "financial matters" between cohabitants. An agreement between cohabitants, to provide for financial matters during their relationship or at the end of the relationship, will be valid if they have received independent legal advice and the agreement is in writing and signed by both parties. Cohabitants can also choose to opt out of the redress scheme in their "cohabitants' agreement". Therefore if the relationship was met by irreconcilable difference the parties would have already forfeited their potential right to apply to the Courts through the Co-habitation Redress Scheme. It has been said that the advent of the "cohabitants agreement" may well act as a precursor to legislation enacting prenuptial agreements for married couples.

In view of the far reaching effects of the Civil Partnership Act 2010 it is important that all co-habiting couples and civil partners obtain legal advice on how best to regulate their financial and property affairs.

For further information on civil partnerships or co-habitations agreements please contact Enda O'Connor or Peter O'Dea at **O'Connor O'Dea Solicitors**, 40 South Quay, Newcastle West or on (069) 69111 or info@oconnorodea.com .