

**COHABITATION, CIVIL PARTNERSHIP AND CERTAIN RIGHTS AND
OBLIGATIONS OF COHABITANTS ACT OF 2010**

Enacted on 01 January 2011

If a couple are married then there is a bank of legislation which governs their relationship including the Judicial Separation and Family Law Reform Act 1989, the Family Law Act 1995 and the Family Law (Divorce) Act 1996 if that relationship breaks down.

If a same sex couple register their relationship under the provisions of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act of 2010 (which came into law on 01 January 2011) then their relationship is protected under the rights specified in Parts 1 to 14 (inclusive) of that Act.

This Act is an Act of two parts.

The law in relation to cohabiting couples (either heterosexual or same sex) who are not married to each other or are not a "Civil Partnership" is contained largely in Part 15 of this Act. For this law to apply to your relationship then you must qualify as a cohabitant under the terms of the Act. The important qualifying definition contained in Section 172 states that

"A cohabitant is one of two adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners to each other."

In determining whether or not two adults are cohabitants the Court will take into account all circumstances of the relationship particularly the following:

- a. The length of the relationship.
- b. The basis on which the couple live together.
- c. The degree of financial dependence one adult has on the other and any agreements about finances.
- d. Any financial arrangements including any joint purchases of land/property.
- e. Whether the couple have one or more dependent children.
- f. Whether one of the adults supports and cares for the children of the other.
- g. The degree to which the adults present themselves as a couple to others
- h. The relationship does not cease to be an intimate relationship (for the purpose of this qualifying definition) merely because it is no longer sexual in nature
- i. (i) The adults must have cohabited together for at least two years if they are the parents of one or more dependent children, immediately before the time the relationship ended or

(ii) five years or more in any other case PROVIDED ALWAYS that if one or both adults during their relationship with each other are married to someone else, that

they have lived apart from that spouse for a period of at least four years during the previous five years.

If you establish that you are a “qualified cohabitant” then you have certain rights and protections under the 2010 Act. These rights are more limited in both nature and extent than those currently available to married couples and civil partners.

A “qualified cohabitant” can apply to the Court, on notice to the other cohabitant for certain redress PROVIDED the applicant can satisfy the Court that he/she is financially dependent on the other cohabitant and the financial dependence arises from the relationship or the ending of the relationship.

The Court if satisfied on the question of financial dependence, can make certain property adjustment/transfer orders, compensatory maintenance orders (lump sum or periodical) and pension adjustment orders and, in so doing, could deal with the family home.

However the Court must take a number of matters into consideration pursuant to S.173 (3) of the Act. These matters include both partners’ financial circumstances, the rights and entitlements of any spouse or former spouse, the rights and entitlements of any civil partner or former civil partner, the rights and entitlements of any dependent child or of any child of a previous relationship, the length of the relationship, the degree of commitment to each other, the contributions made by both partners, the contribution made by either partner in looking after the home, each partners earning capacity, the physical/mental disability and the conduct of each partner.

Before the Court makes a Property Adjustment Order it must decide if it would be more practical to meet the other partner’s needs by way of a maintenance or pension adjustment order.

Under Section 194 a qualified cohabitant can apply to the Court for provision out of the estate of a deceased cohabitant provided that:

1. The application is made within six months of any Grant of Probate or Administration. (Please note the Statute of Limitations of 2 years – therefore within 6 months of any Grant of Probate or Administration or 2 years from the date of death, whichever is the sooner).
2. The cohabitants were not separated for two years or more before the deceased’s death unless
 - a. The deceased was paying maintenance to the surviving cohabitant, or
 - b. The surviving cohabitant had made application to the Court (within two years of the relationship ending) for redress and either the Proceedings were pending at the time of the death or the Court Order had not been executed, or
 - c. Proceedings were pending or a Court Order not been executed for any application for variation under Section 173 (6)
3. The Court may make provision for the surviving cohabitant if it is satisfied that proper provision was not made during the lifetime of the deceased.

4. The Court will have regard to all the circumstances of the case, any previous Court applications and Court Orders and any gifts or bequests already made and all the matters set out at S 173 (3) of the Act as detailed above.

5. If the relationship ended before the deceased's death the Court must be satisfied that the surviving cohabitant is financially dependent on the deceased and has not married or registered a civil partnership.

6. The surviving cohabitant must give notice to the personal representatives of the deceased, any spouse or civil partner of the deceased and any other person that the Court may order and the notice parties shall be entitled to make representations to the Court.

7. The value of any previous Court Orders plus any order under this section shall not exceed the share to which a spouse/civil partner would have been entitled to if the cohabitants had been so.

8. If the surviving cohabitant does not notify the deceased personal representative then the personal representative may proceed to distribute the estate and is not liable to the surviving cohabitant but this does not prejudice the right of the surviving cohabitant following the assets into the hands of a person who has received them.

9. An Order under this section does not effect the legal right of a surviving spouse and the "net estate" of the deceased shall be what remains after payment of all liabilities of the estate and any rights under the Succession Act of a surviving spouse or civil partner.

All claims shall be made, except in exceptional circumstances, within two years other than under Section 194 above and any applications for variations under Section 173 (6).

The High Court and the Circuit Court will hear applications for redress (Section 173) and for provision out of the estate of a deceased cohabitant Section 194.

The District Court has jurisdiction for application for redress (Section 173) and for provision out of the estate of a deceased cohabitant (Section 194) provided it is an application for periodical payments less than €500.00 per week and is not a matter in which the High Court has made an Order, or the Circuit Court has made an Order (other than an appeal from the District Court).

The Courts can only exercise this jurisdiction for redress (Section 173) if both cohabitants were ordinarily resident in the State throughout the one year period prior to the end of the relationship and either of the cohabitants is

(a) Domiciled in the State on the date of the application or

(b) Is ordinarily resident throughout the one year period that ends on that date.

If the relationship ended before the deceased's death the Courts can only exercise its jurisdiction for provision out of the estate of a deceased cohabitant (Section 194) if each of the cohabitants were ordinarily resident in the State throughout the one year period prior to the end of the relationship and likewise throughout the year ending on the date of death and the surviving cohabitant was in receipt of periodical payments from the deceased either by Court Order or agreement or the surviving cohabitant had within two years from the end of the relationship applied for redress

and either the Proceedings were pending at the time of death or any Court Order had not been executed or the surviving cohabitant had subsequently applied for variation under Section 173 (6) and the Proceedings were pending at the time of death or any Court Order had not yet been executed.

In any other case the Act requires each of the cohabitants to be ordinarily resident throughout the one year period that ended in the deceased's death.

The Circuit Court must transfer jurisdiction to the High Court if land has a rateable valuation (or if not rated the Court believes it would carry such a rating) that exceeds €254.00.

For the purpose of Court Proceedings the cohabitants shall give each other full particulars of each other's property and income.

Court Proceedings will be held in private.

Section 202 provides for cohabitants to enter into an Agreement to provide for financial matters during their relationship or when the relationship ends whether through death or otherwise.

The Agreement is valid only if:

- (a) The cohabitants have received independent legal advice before entering the Agreement
- (b) Have received legal advice together and have waived in writing the right to independent legal advice
- (c) The Agreement is in writing and signed by both cohabitants
- (d) The Agreement meets the general requirements of the law of contract
- (e) The Agreement may provide that neither cohabitant may apply for redress (Section 173) or provision from each other's estate (Section 194)
- (f) The Court may vary or set aside a Cohabitants Agreement in exceptional circumstances if it would cause serious injustice
- (g) If the Agreement meets all the other criteria it will be deemed a Cohabitants Agreement even if entered into before the cohabitation has commenced.

An agreement can set out clearly the intentions of the parties as to the ownership of property, payment of mortgages, guardianship of children and what is intended to happen on separation or death. Full disclosure needs to take place and the agreement needs to be fair and reasonable, prudent, voluntary and without undue influence or duress.

The decision as to whether to enter into an agreement, with a renunciation clause or not is not necessarily an easy one. If the cohabitants are older and have already reared their families, have no dependents and are of independent means then an Agreement may be exactly the correct course of action to protect each cohabitants existing property, income and family succession. In such circumstances an agreement renouncing any claims may be strongly advised and will be of comfort and security for each cohabitant and their respective families. It may be in any event that economic dependency may not arise.

On the other hand, if the cohabitants have one or more dependents and one cohabitant is financially dependent on the other then it is most inadvisable that that cohabitant would waive or renounce his/her rights in an agreement. Each situation has to be examined carefully on its own merits and extreme caution and detailed independent legal advice is strongly advised. Both cohabitants receiving legal advice together, by waiving in writing their right to independent legal advice, is one

best to be avoided. If a complete separation/termination settlement is entered into when the relationship ends then it is envisaged that the renunciation clause will be used as part of the settlement much like the current practice in Separation Agreements vis-à-vis Court applications and the Succession Act.

Very few special taxation benefits are available to cohabitants (such as are available to spouses and civil partners) and any transfer, gift or inheritance of property will carry Capital Taxes on the heaviest band of “strangers in blood” other than in three specific circumstances:-

(a). A gift taken by a qualified cohabitant by Court Order under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 is exempt from both Gift Tax and Stamp Duty. The party obliged to gift the property under such a Court Order is also exempt from the payment of Capital Gains Tax.

(b). An Inheritance taken by a qualified cohabitant by Court Order under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 is exempt from Inheritance Tax. Capital Gains Tax and Stamp Duty do not arise on death.

(c). Dwelling house Exemption – under the Capital Acquisitions Tax Consolidation Act 2003 an exemption from Gift Tax and Inheritance Tax exists for a dwelling occupied by a beneficiary as his or her only or main residence. The following are the primary conditions which must be met in order for a beneficiary/cohabitant to qualify for such relief:-

- i. The beneficiary cannot be beneficially entitled to an interest in any other dwelling at the date of the gift or inheritance.
- ii. The beneficiary must have occupied the dwelling house continuously as his or her only main residence throughout the period of three years up to the date of the gift or inheritance (there are additional provisions dealing with the situation where the dwelling-house has directly/indirectly replaced other property owned by the disponent). Please note that in the case of a Gift taken on or after the 20th of February 2007 any period where the disponent occupied the house as his/her only or main residence will be disregarded as a period of occupation in that house unless the disponent is compelled, by reason of old age or infirmity to depend on the services of the donee/beneficiary/cohabitant for that period (old age refers to a person aged 65 or over).
- iii. The beneficiary must retain ownership in and continue to occupy the property for six years after the date of the gift or inheritance unless the beneficiary was over the age of 55 at the date of the gift or inheritance.
- iv. This relief from Capital Acquisitions Tax (Gift Tax or Inheritance Tax) does not require a Court Order.

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