

## **INFORMATION FOR COHABITEES**

The Family (Scotland) Act 2006, which came into force in May of that year, conferred certain rights of property on cohabitees, a cohabitee being a person who is living with another as if they are in a relationship of marriage or civil partnership.

Whether in a particular case, a couple would be treated in law as cohabitees depends on the length of their cohabitation, the nature of their relationship including whether they have children and the extent to which they bring together or pool their financial resources.

The rights of property introduced by the Act include a presumption of equal ownership of moveable household goods kept or used by the couple during their relationship and a right within one year of the parties' separation to seek an Order for payment of a cash amount in a lump sum or in instalments or within 6 months of either party's death to seek such Orders or a transfer of property.

These Court Orders are designed to recognise the economic advantage which either cohabitee has gained from the economic contributions of the other, including any gains in capital. This means that whereas under the previous law, it was difficult after separation other than in a common law claim for what is known as "unjustified enrichment" to claim compensation for economic contributions made within the parameters of a cohabitation relationship, now it is possible to do so under the Act provided that the cohabitee can establish that they have suffered economic disadvantage.

This would include circumstances where title to a property has been taken in one or both parties' names and one party has made financial contributions by way of investment of a deposit or payment of the mortgage or other household expenditure.

Accordingly, it is important to protect yourself as far as possible against the uncertainty and potential financial hardship resulting from a future separation or death of either party and to protect your own financial stake in any land or buildings acquired during that relationship.

At W & AS Bruce, we have expertise and experience in the preparation of Cohabitation Agreements to provide peace of mind, and you should consider contacting our Court Department through any of our offices for advice and assistance as well as a fee quotation for such an Agreement.

Please note however that we shall only be able to represent one of the cohabitees in relation to the Agreement to avoid acting in a conflict of interest situation and would recommend that the other party seek separate independent legal advice.

In addition to a Cohabitation Agreement, you should also consider instructing the preparation of a Will and our Solicitors will be happy to assist in this regard.