

Legal Update

Cohabitation - The Aftermath

It is a common enough scenario for each member of an unmarried, cohabiting couple to have owned their own homes when they first decided to live together. Commonly, too, one house might have been sold and some of the proceeds used to pay off or reduce the mortgage on the other, or to effect improvements to it - or generally to benefit both parties as a couple - but without any share in the remaining property being acquired. Alternatively, it may simply be that one of the parties had held a reasonable amount of cash at the outset and has applied some, or all, of it in a similar way over the years.

All of this is generally done with the intention of making a contribution to the home and to the other things the parties may benefit from as a couple. But what happens if things go wrong, the relationship breaks down and one party moves out? What becomes of that investment?

The question as to precisely how the rights and liabilities of former cohabitees under the Family Law (Scotland) Act 2006 ought to be assessed by the courts is one which has given rise to considerable uncertainty. Much of that uncertainty has now been removed.

In a recently issued landmark decision, the UK Supreme Court (the highest court in the land) has decided that it is not necessary for the parties to produce detailed accounts of all financial transactions undertaken throughout the period of cohabitation before their rights and liabilities can be properly determined, as had previously been believed. Rather, it has ruled that is enough simply to look at their respective financial positions at the beginning and at the end of the period of co-habitation. If it is clear from that basic assessment that a "clear and quantifiable economic imbalance" has arisen from the cohabitation, then an appropriate award for compensation can be made.

This judgment should therefore make it a lot more straightforward in future for a former cohabitee who has been financially disadvantaged, as a result of the cohabitation arrangement, to obtain an appropriate level of redress through the courts.

However, it remains the position that each such case which comes before the courts will be determined according to its own facts and circumstances. As with any other transaction you might decide to enter into, the best time at which to regulate and protect your interests is right at the start. A properly drafted cohabitation agreement can provide a clear framework for a fair and appropriate division of assets in the event of a breakdown in the relationship, without the degree of uncertainty which can arise when the court is called upon to apply the law to your own individual circumstances.

If the relationship ends on death, claims under the 2006 Act can be avoided if the parties have made wills regulating the way in which their estates should be distributed.

For further information and advice please contact Greig McDonell.

[View Greig's Profile](#)

Legal & Estate Agency Services



House Purchase & Sale

A one stop service for purchase & sale



Wills, Executries & Trusts

Efficient and speedy administration of Estates



Civil Court/Matrimonial/Employment

Sympathetic and supportive services



Commercial & Corporate

Expertise to deal with Commercial & Corporate Law



Agriculture and Estate

A full complement of Agricultural legal services



Criminal Law

Advice on all aspects of Criminal Law



Commercial Property

Experienced in all aspects of Commercial Property transactions

Iain Smith & Partners, W.S. committed to delivering high quality support and advice to private and business clients throughout Scotland



Iain Smith & Partners W.S.
Solicitors & Estate Agents

Bank Close
Galashiels
Selkirkshire
TD1 1BG

Office Tel: 01896 752231

Property Dept Tel: 01896 663410

Fax: 01896 754469

Email: gala@iainsmith.co.uk

Website: www.iainsmith.co.uk