



EAST LOTHIAN  
LADIES



GILSON GRAY

LAW • PROPERTY • FINANCE

## COHABITATION IN SCOTLAND

EXPLORING THE MYTHS SURROUNDING THE LEGAL  
IMPLICATIONS OF COHABITING WITH SOMEONE



## MOST COMMON MYTHS

- Common Law Marriage
- No Ring, No Problem



# COMMON LAW MARRIAGE

- No such thing as “common law marriage” in Scotland
- Closest you could come is that pre-2006, couples/surviving partners could seek a declarator from the court to say that the parties were married by establishing cohabitation with *Habit and Repute*
- What were the benefits?
- How easy was it go get a Declarator...not easy at all
- Except in very limited circumstances, abolished by the Family Law (Scotland) Act 2006, some 253 years after England abolished their equivalent law.
- Only now possible to advance such a claim where cohabitation began before the introduction of the 2006 Act – but even then, it is not automatic – there were often findings that couples were simply a cohabiting couple, rather than husband and wife.

## Relationships where you have legal rights:

- Marriage
- Civil Partnerships; and
- Cohabitants...



## NO RING, NO PROBLEM

On the opposite end of the spectrum, there is a common misconception that if you're not married, there are no legal issues that flow from that. That's simply not the case! In Scotland, cohabiting couples have rights, and can make a claim against the other on separation, or upon death.

- **Separation**
  - What does the law say?
  - Potential Issues arising where:
    - An asset was contributed to unequally;
    - Where an ex-partner seeks to cause difficulties, and refuses to have sensible discussions.
- **On death**
  - What does the law say?
  - Potential issues arising where:
    - Someone passes away with a will – to someone else!
    - Someone passes away without a will.

The reality is that, because the legislation is so brief (and due to be overhauled) and there have been very few cohabitation cases to make it through to a final trial without settling, so there is still much uncertainty



## WHAT CAN WE DO FOR YOU?

If you're in a relationship, and wish to regulate matters, we can prepare a Cohabitation Agreement, which will regulate the position in relation to any assets you may have (or your partner may have) in the event of separation or on death. These Agreements can, if you choose, allow you to “opt out” of the Cohabitation legislation.

If you have separated or your partner has died, and you think that you might be entitled to something, then you should contact us. Any claim (at the moment) has to be started [within six months of death;](#)  
[and within one year of separation.](#)



## To get in touch

If you have any questions or would like our help please get in touch

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