

RIGHTS OF COHABITANTS

Leaflet No. 16



LEGAL AID BOARD

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This leaflet is not an interpretation of the law.

A cohabitant is a person who lives together with another person:

- as a couple in an intimate and committed relationship;
- who is not related to them within the prohibited degrees of relationship – such as parents, grandparents, siblings, children, grandchildren, or nieces/nephews; and
- is not married to, or a civil partner of, that person.

The Civil Partnership and Certain Rights of Cohabitants Act 2010 gives certain legal rights upon the break-up of the relationship to long-term cohabitants, referred to as a “qualified cohabitant” for the purposes of the Act.

To qualify for the legal rights available under the law, cohabitants must be living together for at least five years if they have no children, or two years if they do have children. You cannot be a qualified cohabitant if you or your partner are married, and, at the time of the break up of the relationship, the person who is married has not been separated from their spouse for at least four of the last five years.

If your relationship with your partner is in trouble

The Court should always be regarded as a last resort. Court proceedings in Ireland generally have a negative impact on relationships, and although the Judge will attempt to make a fair ruling, it may not end with the result either party wants.

It may be better to attend relationship counselling or family mediation, to help work out a solution mutually acceptable to both parties. Details of the State funded Family Mediation Service are available at www.legalaidboard.ie

Redress scheme for long-term cohabitants

A qualified cohabitant may apply to the Court for certain orders:

- An order that one cohabitant pay the other cohabitant a lump sum;
- An order that a financially dependant cohabitant be financially maintained by the other cohabitant (**a maintenance order**). The Court may also vary (change) this order in line with circumstances, make interim (temporary) orders, order that payments be made through the District Court clerk, and order that a person's employer make the payments out of his/her wages (attachment of earnings);
- An order making a payment or benefit out of the pension of one qualified cohabitant to the other (**a pension adjustment order**);
- An order requiring a cohabitant to transfer some of their property to the other (**a property adjustment order**); and
- An order giving a surviving cohabitant provision out of the estate of the deceased co-habitant.

The grant of these orders is not automatic. The Court will take a number of factors into account when deciding whether or not to make an order. These factors include:

- The financial circumstances, needs and obligations of each cohabitant;
- The rights of others (including the rights of spouses, former spouses, civil partners, former civil partners and dependent children of either partner);
- The duration and nature of the relationship; and
- The contribution made by each, financial and otherwise.

Cohabitants' Agreements

You may make a Cohabitants' Agreement with your partner to provide for the financial arrangements in the event of the break-up of your relationship.

For such an agreement to be valid, the following conditions must be met:

- Each of you has had independent legal advice or you have received legal advice together and have waived the right to independent legal advice;
- The agreement constitutes a contract and complies with the law of contract; and
- The agreement has been signed by each of you.

You may contract out of the redress scheme by means of a Cohabitants' Agreement. Cohabitants' Agreements are enforceable by the Court, however, the Court may set them aside or vary the agreement if the enforcement of the agreement would cause serious injustice.

Domestic Violence

Remedies under the Domestic Violence Acts are available to cohabitants where:

- you have been living together for a prescribed length of time, (six out of nine months for a barring order); or
- you have lived with the other party in an intimate and committed relationship (for a safety order); or
- you are not living together as described above but have a child or children in common from your relationship (safety order); and
- in the event that you are seeking a barring order, the person you are taking proceedings against does not have a greater interest in the house you are living in than you do.

The Board's Leaflet - "Domestic Violence", gives further details on the remedies available under the Domestic Violence Acts.

Property rights

Unless you hold a property jointly (you are both the registered owners, or your names are both on the title deeds), you do not have the right to inherit any property from your partner on their death. In certain circumstances you may be able to apply for a share of the deceased cohabitant's estate. Cohabitants may want to pay special heed to the importance of making a Will.

Children

Where a couple is unmarried, only the mother is a legal guardian. The Board's **Leaflet No. 8 - Children and Family Law**, explains the position in greater detail and the remedies available.

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HOURS OF OPENING

10.00 a.m. - 12.30 p.m. & 2.00 p.m. - 4.00 p.m.

QUAY STREET, CAHIRCIVEEN, CO. KERRY.

LOCALL No. 1890 615200

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