

A delicate issue for older people in Scotland

Many Scottish couples are lucky enough to enjoy long and happy marriages and to have children. Most of us take great pleasure in enjoying watching our children grow and develop and we share their successes and sometimes the pain of their difficulties. This is all part of the enduring tapestry of family life.

However as the saying goes “all good things must come to an end” and the simple truth is that we will all die sometime. Death is the respecter of nothing and will strike the happiest of couples, bringing pain and unhappiness to the survivor. There is no certainty that couples will die close together in time. Consequently it is quite likely that a widow or widower may face the possibility of many years of life on their own. Some cope very well with this. But for others loneliness is a severe problem and consequently many older people seek companionship and friendship from others of a similar age.

Inevitably therefore as time passes new relationships spring up and may develop into strong and significant partnerships. Parties may even decide to live together and many of us will know couples enjoying a happy “second” relationship.

This is all good news of course. However it is also the case that many folk entering a second informal relationship of this type do not realise that there are potential legal consequences flowing from that relationship. A potentially very major consequence is that cohabiting in this way gives each party a claim on the other person’s estate at death should that person die without making a Will. Any such claim must be lodged at court within six months of the death. The court has discretion to make an award of a capital payment or a property transfer to the claimant. The court must consider various different factors including the duration of the cohabitation before deciding if a claim should succeed but there is no set guidance as to what level of award is fair or reasonable.

Consequently “cohabitation” may have quite unintended consequences. Let’s say a widow with adult children is a house owner and has some savings. Dying without a will would result in the children inheriting everything. However, what if she strikes up a friendship with a widower who has no property; she cohabits with him, and then dies without making a Will? That widower can make a claim on the estate which will reduce the children’s inheritance if an award is made. Did the widow realise this could happen? Did she want it to happen? That claim and a possible family dispute would have been stopped by writing a Will.

Also consider the possibility that this particular widow has a pension entitlement which has not yet been received. Maybe she is under 65 or has chosen to work on a bit and not draw her pension on the first date due. Should she then die it is quite possible that the trustees in the pension scheme might take any cohabitation into account before deciding to whom to pay for example a lump sum due. Again a payment to the new cohabitant could be made restricting an entitlement of the children. Pension schemes can be a bit of a “moveable feast” here because of the discretion trustees normally have. It is therefore important for older cohabitants to be aware of these possibilities and to update their pension scheme trustees with a

clear note of their wishes. Do they want any payments to include or exclude this new cohabiting partner?

The issue here is preparing for the future – all older people should take advice and plan for the future so they know their wishes will be followed. Cohabiting with another party is only one of a number of matters which can affect succession rights. Sadly many people prefer not to think ahead to contemplate their own death – they think “everything will work out fine” and prefer not to address the subject. Sadly split families, second families, and informal relationships are now very common and in these situations things very often do not “work out fine”. So our message to older folk is – think about the relationships you have and what you want them to be and to mean. If you intend to cohabit with a new partner – make a Will. You can include that partner if you want or you can do the opposite. But don’t leave matters to chance – that just leaves potential problems for everybody.