

Coronavirus and cohabiting

How coronavirus could impact greatly on co-habiting couples

Co-habiting couples are being urged to take speedy and proper action if one of them was to die without making a will.

Personal law specialists Gibson Kerr said with coronavirus sadly claiming the lives of many people before their time, the remaining partner has no automatic right to any part of the estate if the deceased person has not made a will.

And it is warning that tight timescales are in place for the remaining partner to make a claim against the estate – or risk potential heavy financial losses and ugly squabbles with family members.

Head of Personal Law Lindsay Maclean said: “Someone who is taken ill suddenly may not have the opportunity to make a will. If your partner has died without a will, you may be left wondering what your rights are.

“In order to make a claim against an estate as a cohabitant, you have to raise a court action within six months of your partner’s death. This is a tight timescale and you should therefore seek legal advice as soon as possible.

“The maximum amount a cohabitant can be awarded from the estate is the amount which you would have received had you been married to, or in a civil partnership with, the deceased person. This will depend on the assets your partner owned.

“At Gibson Kerr we can advise you on the maximum value of your claim once we know more about your partner’s assets. It is important to understand that you may not necessarily receive

the maximum amount of the award from the estate; it will be for the sheriff to decide what the award is. The sheriff will take account of various factors, such as whether you have received any other benefit from the deceased person, like a pension benefit, and who else will inherit from the estate.

“By working out the maximum value of the estate, we can help you decide whether you should proceed with a claim against the estate.”

Lindsay said that it is also possible to agree a settlement out of court if the executors and beneficiaries of the estate are willing to negotiate; saving time, expense and stress of court action.

But she added: “If your partner has made a valid will, but not left you a legacy in it, unfortunately you cannot make a claim against the estate as a cohabitant. This is because cohabitants’ claims can currently only be made against estates where there is no will.

“We understand that this will be an emotional time for people in a situation like this. Our honest, practical advice can help to make a decision on whether to make a claim against the estate and we will guide you through that process expertly.”

Although lockdown restrictions will continue to mean it is unlikely that you will be able to meet a solicitor in person during this time, Gibson Kerr’s solicitors are working remotely. They are happy to have an initial meeting over a video call, using video software such as Zoom or Skype; or indeed by telephone.

[su_spoiler class="my-custom-spoiler" title="About Gibson Kerr"]Operating from two Edinburgh city centre locations and specialising in personal law, family law and property, Gibson Kerr is led by its three partners Scott and Fiona Rasmusen, and Lindsay Maclean.

Fiona is Head of Family Law, the Property team is headed by Scott, while Partner Lindsay, who joined the firm in 2007, is Head of Personal Law.

To book, simply call 0131 202 7516 – or fill out an online enquiry form via www.gibsonkerr.co.uk [/su_spoiler]