

Civil partnerships

Sir Elton John and David Furnish were amongst 700 gay couples to enjoy a civil partnership ceremony on 22nd December 2005, following recent changes in the law allowing same sex couples to enter into a publicly recognised relationship that is substantially equivalent to marriage. The Civil Partnership Act 2004, which came into force on 5th December 2005, builds on the human rights emphasis on equality and the rights of individuals to a family life etc and brings about some long overdue entitlements to established relationships.

Who can enter into a Civil Partnership?

Civil Partnerships are only available to same-sex couples aged 16 or over who are not already married or party to a Civil Partnership with another person and who are not closely related to each other in the same degrees of relationship as would prevent a marriage between a mixed sex couple. If one of the prospective partners is under 21, the prohibited degrees of relationship are extended to include situations where the younger partner has been a child within a family unit of the other partner.

Impact of entering into a Civil Partnership

The registration of a Civil Partnership confers the “rights” equivalent to those of married couples, including rights of inheritance under the Intestacy Rules. However, entry into a Civil Partnership also brings with it the responsibilities and burdens equivalent to marriage.

Ending a Civil Partnership

Civil Partnerships can be brought to an end by obtaining a Court Order for the dissolution of the partnership in a way substantially equivalent to divorce for a married couple. Such an application can only be made after a year has elapsed from the registration of the Civil Partnership and the only ground for applying for an Order is that the relationship has irretrievably broken down. This has to be proved by one of four facts:

1. The respondent has behaved in such a way that the applicant cannot reasonably be expected to continue to live with him/her (the “Unreasonable Behaviour” basis)
2. The parties have lived apart for two years and consent to the dissolution
3. The parties have lived apart for five years
4. The respondent deserted the applicant at least two years before the application is brought.

N.B. Adultery is not, of itself, a fact supporting the irretrievable breakdown of a Civil Partnership and therefore a Civil Partner who wishes to end a relationship due to the infidelity of the other would have to use the Unreasonable Behaviour basis. Similarly, because there is no presumption that a Civil Partnership has a sexual element, the lack of a sexual relationship is not a ground for seeking to end the relationship unless it can be brought within the Unreasonable Behaviour ground. In the same way, because consummation of a relationship is not required for the Partnership to be valid, it opens up inheritance tax advantages to same sex friends/companions who live together but would not consider themselves to be in a romantic relationship.

If a Civil Partnership is ended, financial Orders relating to payment of maintenance or for the transfer of property etc can be made in the same way as in divorce cases.

A warning

Previously, same sex partners had no statutory rights of inheritance from each other and were limited to bringing claims for provision out of a deceased partner's estate as a dependant (if they could show financial dependency). If they succeeded, they were only entitled to the basic level of maintenance rather than the more generous provision for a spouse.

Same sex couples sharing homes may have already made Wills providing for each other. If they enter into a Civil Partnership, such Wills will be revoked automatically and it will be essential for them to enter into new Wills as a matter of urgency.

A couple may also wish to enter into a pre-partnership agreement to deal with property and financial issues in the event of the breakdown of the relationship, as is becoming more common with prenuptial agreements. As with prenuptial agreements, these are not (yet) legally binding but may carry weight with the Court considering financial issues ancillary to an application for the dissolution of a Civil Partnership.

The IBB Estate Planning team were recently rated one of the top firms in the region for probate, trusts and personal tax advice by the Legal 500 Directory. Gillian Murray is listed as an expert in her field by the Legal Experts Directory. For further advice contact Gillian on 01494 790024 or gillian.murray@ibblaw.co.uk