

## **NOWELL MELLER SOLICITORS LTD FAMILY LAW SERVICE**

### **LEAFLET NO.7 – CIVIL PARTNERSHIPS**

The Civil Partnership Act 2004 came into force on 5 December 2005 and allows same-sex couples to register their partnership, so that every right and responsibility arising from marriage between heterosexuals is available to them, apart from a religious ceremony.

#### **Registration**

To register a civil partnership, the parties must not be of the opposite sex, already married or a civil partner, younger than 16 years of age or within certain prohibited degrees of relationship (e.g. parent and child).

Following the giving of appropriate notice, and a 15-day waiting period, the two parties simply sign a partnership document in the presence of each other, the registrar and two witnesses. This is not a religious ceremony and must take place in England and Wales. These time-limits mean that the first civil partnerships were registered on 21 December 2005.

#### **Termination, annulment and dissolution**

The ground for dissolution of a civil partnership is "irretrievable breakdown" of the relationship and this mirrors in most respects the ground for divorce. This can be proven by relying on one of four facts – unreasonable behaviour, 2 years' separation and consent, 2 years' desertion and 5 years' separation. Adultery is not a fact for the purposes of dissolution, although sexual infidelity may count as unreasonable behaviour.

As with divorce, no application may be made for a dissolution order within the first year of the partnership. This does not of course prevent an application from being made after that date based on events that occurred during the first year. Accordingly, the first petitions for dissolution may only be presented after 21 December 2006.

The provisions relating to nullity are more complicated but again broadly mirror those available to married couples.

The civil partnership will terminate upon the death of a party or following an order of presumption of death (e.g. where a partner has been absent for a period of seven years or more).

## **Financial Claims**

The provisions in Schedule 5 of the Act again mirror those available to married couples and so reference can be made to our information sheet on Divorce and Financial Applications.

The available court orders include:

- a) Periodical payments to a civil partner or to any person for the benefit of a child of the family;
- b) A lump sum or sums to a civil partner or to any person for the benefit of a child of the family;
- c) Property adjustment;
- d) Variation of settlement;
- e) Sale of property; and
- f) Pension sharing

There are several factors that a court will take into account when it exercises its jurisdiction to make an order. These include all the circumstances of the case, giving first consideration to the welfare of any minor child of the family. Since these provisions mirror those in Section 25 of the Matrimonial Causes Act 1973, it is likely that the court will apply the same general approach as for married couples. Hence, the length of the relationship, and any pre-agreement cohabitation will be relevant.

It is thought that many same-sex couples will have lived together for a long time before entering into a partnership. The extent to which a court might uphold a pre-partnership agreement is unclear, but these are gradually finding favour in the case of married couples and many commentators believe that their use will be more widespread in the case of civil partners where they are thought more likely to be upheld by the courts. At the very least, the agreement can be used as clear evidence of the intention of the parties at the time they signed it.

Civil partnerships have their origin in statute rather than canon law and are not expected to represent a union for life in quite the same way. That being so, there does not seem to be any real policy reason as to why prior agreements properly entered into by cohabiting same-sex couples should not be upheld, particularly where there are no minor children. Only time will tell.

## **Financial Provision for Children**

The court, in exercising its powers in relation to a child of the family, will have regard to the financial needs of the child; income, earning capacity, property and other financial resources; any physical or mental disability; educational or training expectations; financial circumstances of the civil partners and any physical or mental disability on their part. In most cases, unless an adoption order has been made, the child will not be a child of both partners.

## **Parental Responsibility**

A step-parent can now acquire parental responsibility for a child of his spouse or civil partner without the need for a residence order. This can be achieved by way of agreement in a prescribed form (Form C(PRA)), bringing the new law into line with the existing provision for unmarried fathers.

## **Adoption**

Same-sex couples who are civil partners will now be able to adopt children in the same way that married couples can.

## **Taxation and Wills**

There have been changes in taxation regarding civil partners and specialist advice should be sought particularly in relation to tax-planning and Wills. Some careful tax planning before a partnership is entered into can save time and money.

It should be noted that entering into a civil partnership invalidates any existing Will and that new Wills should be made by the partners following registration of their civil partnership if they wish to avoid falling foul of the intestacy provisions.

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NOTE: The above is intended as a general guide for your information. It is NOT intended as a substitute for proper legal advice. Each case is different and advice cannot be given without a proper analysis of your own circumstances.

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