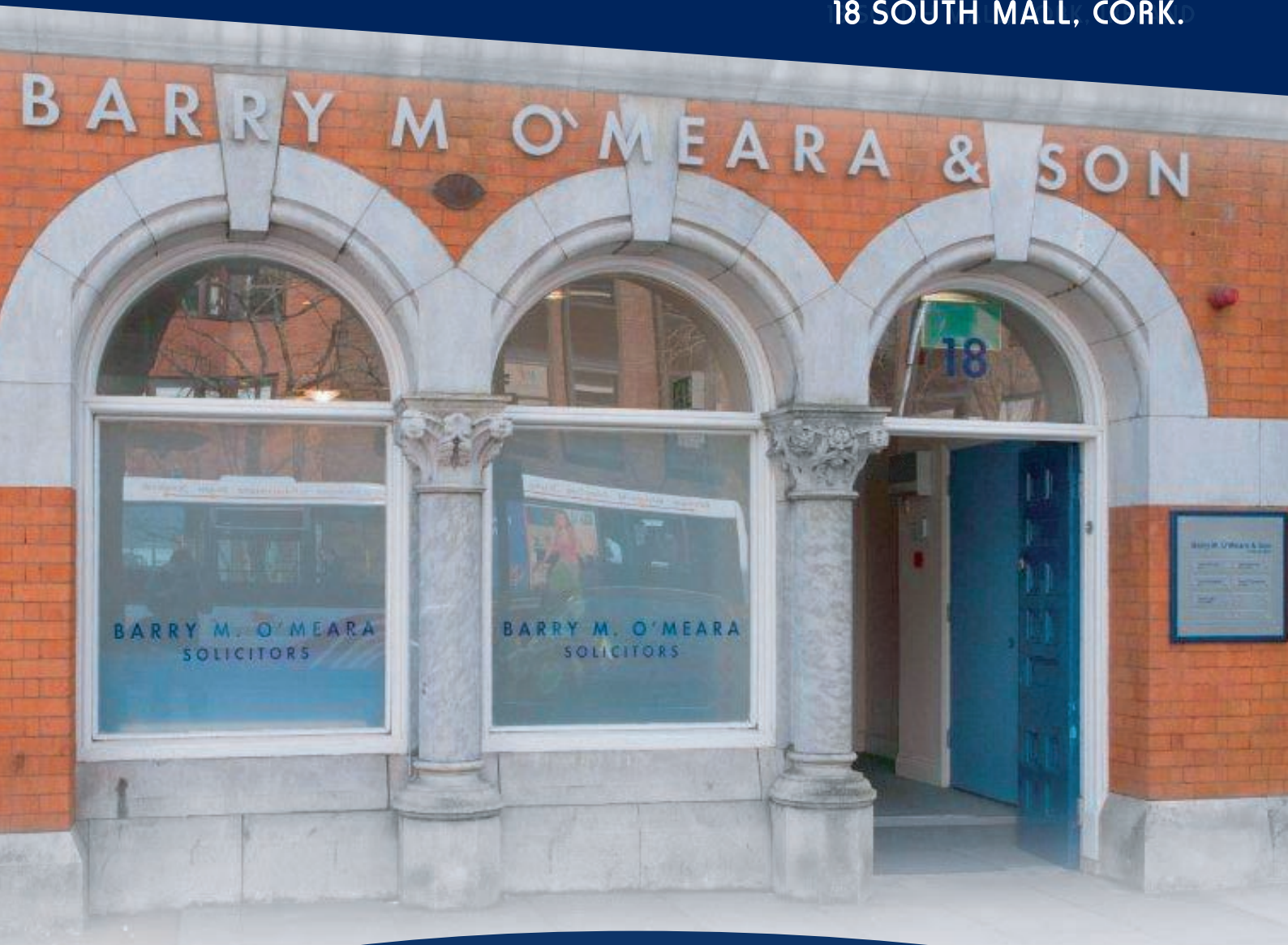


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CHANGES TO CIVIL PARTNERSHIPS

As and from the 1st January 2011, civil partnerships were given recognition never before seen in Ireland. The Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 has made major changes to the law in relation to cohabitation and its effects, not only the legal stature of the relationship, but also, on the entitlement of individuals to protect assets and provide financial rights that anyone cohabiting needs to be aware.

Prior to the Act, co-habiting partners did not have any legal rights of occupation to a home, financial support or inheritance. Unlike married couples, if a cohabiting partner died, the surviving partner did not have any legal rights in the event of an intestacy. This has now changed to the point that unmarried co-habiting couples now have rights, once certain criteria have been met, unless they opt out.

Who is a Cohabitant?

A cohabitant is one of two adults (they can be the same or opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship, or are married to each other, or are civil partners of each other. The following non-exhaustive list will assist in determining if parties may benefit of the Act:

- 1.) The duration of the relationship;
- 2.) The basis on which the couple cohabit;
- 3.) The degree of financial dependence and any agreements regarding same;
- 4.) The degree and nature of any financial arrangements e.g. Joint purchase of property
- 5.) Are there any dependent children;
- 6.) The earning capacity of each of the cohabitants and the responsibilities assumed by each during the period they lived together as a couple;
- 7.) The degree to which adults present themselves as a couple to others.

Since the Act, if a party can satisfy the above and show that they have been in an intimate and committed relationship for 5 years or more, the ex-cohabitant can now seek orders for maintenance, pension adjustment orders and an interest in a shared property. If the cohabitants are parents of dependent children, the time limit is reduced to 2 years or more.

The Act is open to interpretation on a number of fronts and will, no doubt require judicial intervention in order to assess certain scenarios: What constitutes a relationship? What if one partner considers a relationship to be 'intimate and committed', but the other believes it is purely casual? Perhaps the parties only meet up every few months for a period of time, before going their separate ways for a few more months! Furthermore, the Act remains silent on children dependent on and living with same sex couples.

Benefitting from the Act

In order to benefit from the Act, an application must be brought before the court within 2 years of the relationship ending – whether through death or otherwise.

If a qualified cohabitant satisfies the court that he or she is financially dependent on the other and that financial dependence arises from the relationship or the ending of same, certain redress may be made by the court, as appropriate. The court may make orders relating to:

- 1.) Property Adjustment orders;
- 2.) Maintenance orders;
- 3.) Pension Adjustment orders;
- 4.) Applications for provision from the estate of a deceased cohabitant.

Opting-Out

To avoid the Act, cohabitants must act positively and opt out, by way of a cohabitant's agreement. This is a legal agreement which allows couples regulate their finances, themselves. Items such as property, debts, bank accounts, custody and access of children amongst others may be addressed in such agreements. If couples do not opt-out, they very likely could find themselves the subject of court proceedings under the Act.

On a final note, whilst it is imperative for couples to draw up an agreement in order to avoid the Act, it is open to the courts, in "exceptional circumstances" to set aside such an agreement, where its enforceability would cause serious injustice.

Your Contact:

If you wish to discuss any of the above issues or any other family law issues that arise, please contact **Noel Power** at noel.power@bmomeara.ie or telephone 021-4273305

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