



# Can Ex-spouses Claim Against Estates?

Modern divorce (or dissolution) financial settlements may contain a clause which prevents ex-spouses (or ex-civil partners) from making a claim against each other's estate, in the event of their death.

The reason for this is that ex-spouses and ex-civil partners can bring claims against estates for 'reasonable financial provision' under the [Inheritance \(Provision for Family and Dependents\) Act 1975](#) ("the Inheritance Act"), provided that they have not remarried or formed a new civil partnership.

By including the above type of 'exclusion' clause in a divorce or dissolution settlement, the right to bring an Inheritance Act claim usually expires, unless the couple later re-marry each other (or form a new civil partnership with each other).

However, not all divorce (or dissolution) settlements may contain this provision, or they may provide for one ex-spouse (or civil partner) to make regular payments to the other. The problem with not obtaining a 'clean break' financial agreement is that one ex-spouse or ex-civil partner may remain financially dependent upon the other and that could give rise to a claim under the Inheritance Act.

## What happens if a divorced couple reconcile?

If the couple later remarry (or enter into a new civil partnership with) each other, they should be able to claim against each other's estates under the Inheritance Act.

But what if they reconcile and they do not remarry? In the case of *Chekov v Fryer [2015]*, a married couple divorced in 1980. Under the terms of their divorce settlement, they agreed that neither party would be entitled to claim against the other's estate under the Inheritance Act. However, by the time the husband died, his ex-wife had moved back in with him and she brought a claim under the Inheritance Act to obtain reasonable financial provision from his estate.

How was the ex-wife able to do this? Her claim was made as a co-habitee, rather than as an ex-spouse. Under the Inheritance Act, certain cohabiting couples who have lived together for a continuous two year period prior to one partner's death, are entitled to bring claims for 'reasonable financial provision' from their partner's estate.

In *Chekov* the deceased's sons objected to the claim and applied to the court to have it struck out on the basis the ex-wife was not permitted to bring such a claim because of the divorce settlement. Although, they accepted

that the ex-wife and the deceased were living in the same property at the date his death, they disputed that they were living together as a cohabiting couple.

The court held that the Inheritance Act only prevents an ex-spouse from bringing a claim in that capacity. Therefore, if an ex-spouse falls under any other category of claimant under the Inheritance Act, they can still bring a claim. So, if the ex-wife could show that she was cohabiting with the deceased, she would be able to issue a claim as a cohabitee.

And what about couples who divorce but, due to financial reasons, both remain living in the same property? They are unlikely to want their ex-spouse to be able to claim under the Inheritance Act as a cohabitee, as such cohabitation is likely to be purely for practical purposes. For example, with a view to obtaining the best value for a jointly owned property or being unable to rehouse both ex-spouses if their joint property is sold.

Unless they are living together as a couple, it is unlikely that they would be able to claim under the Inheritance Act as a cohabitee, but it is important for ex-spouses (or ex-civil partners) to obtain legal advice about the impact of the Inheritance Act if they plan to continue to live together after their divorce or dissolution.

If someone wants to bring a claim under the Inheritance Act, they should also consider obtaining specialist legal advice before doing so. Especially, as there is a time limit to when the claim can be made.

Our [Disputes Wills, Trusts & Probate solicitors](#) can provide further advice about Inheritance Act disputes. Contact the team on 01202 786164 or by emailing [online.enquiries@LA-law.com](mailto:online.enquiries@LA-law.com).