

# Why you should make a will to protect girlfriends and concubines

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Marilyn Monroe may have had a point when she sang “Diamonds are a girl’s best friend”. That’s because, legally, there is little protection for “girlfriends” in Hong Kong, so holding valuable assets could be the way forward. Let’s not deny it; there are plenty of girlfriend relationships, which are not legally formalised or recognised in Hong Kong.

Prior to 1971, concubines, or individuals party to a Kim Tiu marriage, where a man could formally marry more than one principal wife and maintain a household for her, were legally recognised. After the passing of the Marriage Reform Ordinance in 1971, the formality of these relations was outlawed.

There is no such thing as financial legal protection for the “common-law wife”, which is a misnomer. Individuals will only have rights to such provision on the breakdown of a relationship if the parties were married.

Even where parties have been living together as husband and wife, without formalising the relationship by registering their marriage, the protection for the financially weaker party will be confined to provision for their children, if any, and not for him/herself.

In a relationship akin to marriage, where there are children, the party who is looking after the children may be entitled to a carer’s allowance, which will cover her living expenses while she cannot work because she has the children to care for. If the couple has joint property, then the usual contractual or property law will apply in respect of their share of individual assets.

But what if the relationship is not one of the increasingly common settled cohabitation between parties, but one of a dependency which may have arisen as a result of an affair?

It may be that the girlfriend has become financially dependent on the wealthy party who has found accommodation for her, paid her a monthly allowance, lavished gifts on her and promised her various lump sums and long-term security.

What if he dies suddenly or becomes incapacitated? Is the girlfriend who had been enjoying a comfortable lifestyle protected in any way by the law?

If the paying party dies leaving a dependent who was his girlfriend, and if there was no provision for her under his will, she may be entitled to make a claim under the Inheritance (Provision for Family and Dependents) Ordinance if she was a partner by a union of concubinage, or if she can prove that she was maintained wholly or substantially, by the deceased immediately prior to his death.

This would be a very old relationship, bearing in mind the 1971 deadline, but such cases do come up. Such a claim can only be made if the deceased was domiciled in Hong Kong, or was ordinarily resident in Hong Kong at any time in the three years immediately prior to his death.

If the court considers that the applicant has a valid claim, financial provision, which includes monthly or lump sum payments as well as property transfer orders, could be made in her favour.

If the paying party becomes mentally incapacitated, the girlfriend can make an application under Part II of the Mental Health Ordinance.

This can be complicated because the property of the mentally incapacitated person will be handled by a committee, and this usually comprises of family members who may be hostile towards the girlfriend.

If it is the intention of the wealthy party to make provision for his girlfriend, better to get the assets put in her name at the outset. In addition, a watertight will is advisable. Otherwise, hang on to those diamonds.

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