



The Myth Of The Common Law Spouse

The increasing number of unmarried couples has made the legal rights of cohabitants the subject of hot debate, with cohabitation being the fastest-growing family type in the UK. In 2012, 5.9 million people were cohabiting (*Office for National Statistics, Short Report: Cohabitation in the UK, 2012, 1 November 2012, page 1*) and it's predicted that one in four couples will be cohabiting by 2031 (*The Government Actuary's Department, cited by Baroness Hale in Stack v Dowden [2007] UKHL 17 [15]*).

The 'common-law marriage' myth that cohabitants have similar legal status to married couples (or civil partners) is believed by 53 per cent of cohabiting couples (*Resolution, 'Living together: shared home, shared rights,' Family Law, Bristol, vol 38, 17 September 2008*), which indicates that the position is misunderstood by more than half of the people it most concerns.

People who live together, possibly in a very long-standing relationship, often assume that the surviving partner would be properly provided for in the event of their death – the myth of the 'common law marriage'. However, the law of intestacy, which applies where someone dies without a Will, is wholly inadequate for cohabitants. Similar issues also arise for those cohabiting in a same sex relationship who could have entered into a civil partnership, but haven't.

You might have read recently in the papers that changes are coming with regard to the law of intestacy. Certainly the Government has accepted some of the Law Commission's recommendations to make changes to the intestacy rules, but the proposal to change the rules for cohabitants will not be implemented during this Parliament.

The importance of couples in a long-term relationship having Wills in place cannot be over-emphasised. Left to itself, the law will generally not deal with your assets in the way in which you would have intended. Cohabitants, certainly if they have children but even if they do not, need careful advice

on how their Wills should be drafted to ensure their assets will go to the persons they would want to benefit and to try to reduce the Inheritance Tax (IHT) burden which could otherwise fall on them; the IHT spouse exemption does not apply to a 'common law' wife, husband or partner.

For cohabitants, other aspects of estate planning may not be as straightforward as one might expect. For example, would the cohabitee be eligible to benefit under an occupational or other pension arrangement? If a suitable Will has not been made then even a spouse or civil partner may encounter significant financial difficulties following a death, but a cohabitee will almost certainly find themselves with complex and costly matters to be resolved, adding additional burdens at an already difficult emotional time.

It is particularly important to address issues such as how the family home is owned. Too often co-owners are not overly concerned about this until the relationship between them breaks down, or one of them dies. But by this time it may be too late. Tax planning opportunities may have been missed and there might be argument, distress and even litigation. The shares in the property need to be agreed and formally documented, ideally at the outset but at least before disagreement arises. This may involve appropriate provisions in the cohabitants' Wills.

So, Make a Will

If there is no Will, a person dies intestate and property passes to their next of kin. An unmarried person (or someone not in a civil partnership) has no rights under intestacy law. Although a bereaved cohabitee can still make a claim under the Inheritance (Provision for Family and Dependents) Act 1975, it is better to have a Will in place to avoid any doubt.

Please contact us for further information.

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