

MYTHS OF COMMON LAW MARRIAGE

INHERITANCE

IF WE ARE NOT LEGALLY MARRIED, WE NEED TO DRAW UP WILLS TO EXPRESS OUR INTENTIONS.



Cohabiting couples do not automatically obtain rights over their partner's estate if they die without leaving a will. The survivor has no automatic right under the intestacy rules to inherit any part of his or her partner's estate regardless of how long they have lived together or had children together. Cohabiting couples need to stipulate in a will how they want their estate to be divided when they die. A married partner will inherit all or some of the estate.

WHAT ABOUT OUR HOUSE IF I DIE?



When cohabiting couples buy a house together, they can choose to arrange a contract as joint tenants or tenants in common.

Joint tenancy - Both partners own the property and in the event of death, the

property automatically goes to the other owner.

Tenants in common – Either partner can leave his/her share to whoever they wish to in a will. It is important that you check how you hold your home and ensure that you have made arrangements for the house to be left to the person/s you want.

WHAT HAPPENS TO OUR PENSION?



Unmarried couples cohabiting are not entitled to receive state pension or bereavement allowance for deceased partners. But each partner can complete an expression of wish form for their pension scheme to state who they want their benefits to be distributed on death. However, this declaration is not legally binding.

HOW WILL THE TAX BE CALCULATED?

There is no inheritance tax exemption for cohabitants for any transfer of assets on the death of one of the partners.

THE LAW THAT APPLIES



A cohabitant and spouse or civil partner is equally entitled to succeed

- A protected agricultural occupancy under the Rent Agricultural Act 1976
- A regulated tenancy under the Rent Act 1977
- An assured tenancy or agricultural occupancy under the Housing Act 1988

Under the Housing Act 1985, both a cohabitant and spouse or civil partners may succeed to a secure tenancy.

But an unmarried cohabitant must have resided with the tenant throughout the period of 12 months ending with the tenant's death to make this claim.

INHERITANCE (Provision for Family and Dependant) Act 1975

If a deceased's will or the law relating to intestacy does not make a reasonable financial provision for a cohabitant, the latter can make a claim against their deceased cohabitant's estate under the Inheritance Act 1975.

WHAT ARE THE CONDITIONS FOR A CLAIM?

An application may not be made under the Inheritance Act 1975 unless the deceased died on or after 1 April 1976 and was domiciled in England and Wales at the date of death.

HOW ARE WE ELIGIBLE?

The test for eligibility will depend on the period of cohabitation immediately prior to death.

- If the cohabitants were, during the whole of the period of two years ending immediately before the date when the deceased died, living in the same household and living as spouses/ civil partners, they may make a claim as of right.
- If the cohabitants were not living in the same household as spouses/ civil partners for two years, the applicant must show that immediately before the death of the deceased, they were being maintained either wholly or partly by the deceased.



HOW TO SHOW THAT A COHABITANT WAS BEING MAINTAINED BY THE DECEASED IF THEY WERE NOT LIVING IN THE SAME HOUSEHOLD?

According to S1(1)(e) of the Inheritance (Provision for Family and Dependents) Act 1975, a person is treated as being maintained by the deceased

(either wholly or partly) only if the deceased was making a substantial contribution in money or money's worth towards the reasonable needs of that person, other than a contribution made for full valuable consideration following an arrangement of a commercial nature.

WHAT HAPPENS IN COURT?



To determine the amount of reasonable provision for a cohabitant, the court will limit the provision to that which would be reasonable for the applicant to receive for their maintenance.

OUR RELATIONSHIP



It must be noted that to determine whether a couple has been living as spouses/ civil partners does not necessarily require a sexual relationship.

DEFINING SOME TERMS

Inheritance: Money or objects that someone gives you when they die.

Estate: All the money and property owned by a person, especially at death.

Will: A document in which a person specifies the method to be applied in the management and distribution of his estate after his death.

Tenancy: The occupancy or possession of land or premises by lease.

Claim: To demand or assert as a right. A claim is something that one party owes another. Someone may make a legal claim for money, property.