

**IN SICKNESS AND IN HEALTH**

The number of couples choosing to marry in the United Kingdom is continuing to decline, with the latest figures of 270,000 weddings, down by 2.7% from the previous year and long term predictions expect numbers to drop still further. At the same time, the number of couples cohabiting is increasing, and trends suggest this will continue, especially for those persons over the age of 30 years. As more people choose living together over marriage, many do not realise that they are putting their partner's security at risk in the event of their untimely death. In this article, I explain how the simple solution of making a Will can transform the future for the partner who is left behind.

**What happens if my partner dies?**

Imagine the scenario – your live in partner of ten years has just passed away and, in the midst of grieving, you find out you only have a few days to move from the house you have shared together. On top of that, you have no right to a claim on their estate and, if you worked in a business together and your partner was the sole shareholder, then you may be out of work as well.

What many couples do not realise is that without a Will, if one of them dies, their partner could be left both penniless and homeless. Intestacy rules pass any assets to either surviving parents or siblings of the deceased. The trend for living together, especially for young couples, is one which can have real long term implications if they do not put measures in place to look after each other. The reality is that the second you think about cohabiting, you should draft a Will to take care of your partner after your death. If you do not, then at the very worst, the surviving partner could be left with nothing. They might have to leave their home. At best, if a couple has bought a house together, then the surviving partner could end up co-owning a property with those who would effectively have been their in-laws, which is not a situation many people would want.

## **Property Ownership**

The question of property ownership is something which it is important to get right. Especially for cohabiting couples, who may have a property worth thousands of pounds.

The law allows for people to own a property in two different ways:-

- As joint tenants – this is where the owner's share in the property passes automatically to the surviving joint owner. Therefore, if a non married couple has purchased a property together, the deceased partner's share will go to the surviving joint owner.
- As tenants in common – in this case the deceased partner's share goes to whoever the recipient has left the share to in their Will or, under intestacy rules passes to their nearest relative – hence the possibility of half a property suddenly being owned by a parent or sibling of the deceased partner.

In the latter example, however, a professionally drafted Will can help because it can be structured in such a way as to allow the surviving partner time (if they wish to do so) to find their own funding to purchase the remaining half of the property or to make alternative plans.

## **Business Ownership**

It is not just personal property which needs taking care of after death. With many of today's successful businesses being founded by young professionals who own 100% of their company shares, it is also important to think what might happen to a business in the event of that individual dying.

Here again, professional advice is essential for two reasons.

- It may be possible to claim up to 100% Inheritance Tax relief in the shape of business property relief on a trading business, therefore making substantial savings in Inheritance Tax.

- It may be appropriate to consider appointing a professional trustee, who, in the event of the owner's death, would have a duty of care to appoint someone to run the business and keep it afloat until such time as it could be sold as a going concern.

Making a Will means that if the worst happens, your loved ones will be taken care of, and that is especially important for cohabiting couples who are not protected by marriage. We would urge anyone in this situation to come and talk to us so that we can provide a solution and long lasting peace of mind.

### **Finances, Children, Pensions and Inheritance.**

In addition to making your Wills, a couple living together need to think carefully about what they intend and expect in a number of important areas, including property and financial support, children, pensions and inheritance. If the relationship ends, very different rules apply for a couple who are married and those who are not. When a married couple divorce, a Court can share out assets and order maintenance in the way it considers fair. This is not the case for unmarried couples, and the entitlement on the breakdown of the relationship or death could be very different from what was expected. For example, you may have lived with your partner for many years but this will not entitle you to maintenance or an even share in the house in which you live.

There are also significant differences with regard to rights of inheritance, exemptions from Inheritance Tax and pensions. You should therefore give careful thought as to what rights and obligations are expected from the relationship from the outset. For example, if you intend that you should both have an equal share in your house should you split; you may need to get a Solicitor to draw up an appropriate trust deed. A good Solicitor can also discuss with you the merits of a Cohabitation Agreement. These are not yet fully tested in the Courts and are not always enforceable but they can help couples think about what is to happen if their relationship ends and can set down common intentions, particularly with regard to financial and property matters.

## **Civil Partnerships**

The law governing same sex couples and their legal rights changed following the coming into force of the Civil Partnership Act 2004. It is now possible for same sex couples who are unable to marry to register their partnership. In these instances, if the relationship breaks down and a financial agreement cannot be reached, either party will be able to make an application to the Court. The Judge will be able to make a range of financial orders which will be similar in nature to those orders made within matrimonial proceedings for married couples. The law relating to cohabitation both for same sex and different sex couples is complex; you should seek legal guidance, preferably, at the time you enter into the relationship to avoid the complications that can arise if things do not work out.

### **ACTION**

These examples show just how important it is to go to a Solicitor for professional expert advice. As a legal firm, we spend a great deal of time and training in the law to ensure our clients get the most up to date and comprehensive legal advice available. We believe that it is essential when people are making arrangements for their partner's financial future. If you would like advice on any of the topics raised in this article, please contact me at Busbys on 01288 35 9000.

**Sharon Piper**

**Trust and Estate Practitioner**

**Busbys Solicitors**

**Bude & Holsworthy**