

Where there's a will there's a way

By Marinella Hollies from Hooper & Wollen solicitors

It is estimated that as many as 350,000 people die each year without making a will.

If you are married to your partner or in a civil partnership and die without making a will, your spouse/civil partner and children will automatically benefit from your estate.

Research by the Office of National Statistics found that between 1996 and 2006 the number of cohabiting couples rose by 65% from 1.4 million to 2.3 million and astonishingly four fifths of those had not made a will.

Surprisingly, I still see clients who believe that they are in a common law marriage and entitled to the same inheritance rights as a married couple.

The simple fact is that if you are cohabiting and you die without a will, your partner has no automatic entitlement to anything from your estate, no matter how long you have lived together.

If you have been living together for at least two years, your partner may be able to make a claim against your estate under the Inheritance (Provision for Family & Dependents) Act 1975. The application has to be made within six months of the Grant of Probate or Letters of Administration - at a time when your partner is likely to be grieving and trying to come to terms with his or her loss. The legal claim against your Estate may well be against your children or other members of your family who have benefited and will invariably have financial and emotional consequences.

If you are in any of the following situations, you need to make a will.

- The young couple with no children. They may marry or enter into a Civil

Partnership in the future, but until then, neither would be automatically entitled to inherit on the death of the other.

- The couple where one (or both) of them may still be married to, or in a civil partnership with, another person.

Their husband, wife or civil partner will inherit any jointly owned assets and the first £450,000.



If there are children, the husband, wife or civil partner will still receive any joint assets, together with the first £250,000 of the Estate. If there is anything more, the children will share half on reaching 18. The husband, wife or civil partner will receive the income from the remaining half until they die and only then will the children receive that remaining half.

The surviving partner of the cohabiting couple will not be automatically entitled to anything.

- The couple where one (or both) may have children from a previous marriage which ended in divorce.

The children will share the entire

estate and the surviving partner will receive nothing unless an agreement can be negotiated with the children or court proceedings are commenced.

- Older couples where one (or both) may have built a good relationship with their step-children, and where they would like them to benefit from their estate.

Unlike natural and adopted children, step children will not automatically receive any benefit on an intestacy.

The Law Commission has been considering proposals to change the law on inheritance.

In its consultation paper, 'Intestacy and Family Provision Claims on Death', the Law Commission proposed that the protection of the intestacy rules be extended to unmarried partners who have lived together for some time or who have a child.

A report and draft Bill are expected at best in late 2011. The law is therefore not going to change any time soon.

So, at present, if you are cohabiting, the only way that you can make proper provision for your partner and family is to make a will. □.

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