

COHABITEES AND DEATH - WHO CAN CLAIM?

When one member of a cohabiting couple dies, it can come as an unpleasant surprise to the bereaved partner to discover that their late partner's estate does not pass to them in the absence of a will. It is only when death occurs that some people become aware that there is no such thing in law as a 'common law' spouse, so it is important that people living together give thought to protecting their position by the means currently available to them.

Where there are assets which are jointly held (as 'joint tenants' in legal terminology), these will pass by survivorship to the other partner. Property held jointly and joint bank accounts are normally held in this way. Also, if there is a life assurance policy or there are pension benefits payable to a nominated person, then the surviving partner will receive these if they are the named beneficiary.

Once such assets have been dealt with, however, the rules of intestacy apply if there is no will. An intestate estate passes (with a rather complex formula regarding its division depending on the size of the estate) to the relatives of the deceased. This will normally leave the deceased's partner with nothing.

However, the law does allow a claim for provision to be made from the estate of the deceased by dependents if they are persons for whom the intestate person might reasonably have been expected to make provision.

A surviving cohabitee can make a claim if the deceased died intestate or failed to provide for them in the will if:

- ◆ they were maintained by the deceased in whole or in part immediately before the death of the deceased; or
- ◆ for two years prior to the death of the deceased they lived in the same household as the deceased as if they were the husband, wife or civil partner of the deceased.

In such cases the court may be requested to make 'reasonable provision' for the applicant. There are a series of guidelines which have been set to ensure that the provision made is fair bearing in mind the size of the estate and the circumstances of those with an interest in it.

The court's powers to divide the estate are considerable and can include making orders for periodical payments or lump sums or the transfer of specific property to the claimant. However, it should be remembered that transfers on death to a cohabitee do not qualify for the 'spouse' exemption from Inheritance Tax which applies to transfers to a spouse or civil partner.

Contact Foster Harrington who can provide you with appropriate advice:-

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