

## **Are the rights of unmarried couples changing?**

For many years many have been under the impression that, after a certain amount of time in a cohabiting relationship, they accrue rights as a result of a "common law marriage". These include rights to a share of their partner's assets as well as on-going financial support following separation. This, unfortunately, is a complete myth.

If an unmarried couple breaks up, they are not both automatically entitled to share in what they may have thought were their joint assets, such as the house they lived in together, even if they both contributed to the payment of household bills and the upkeep of the property, if one of them isn't named as an owner on the deeds. This applies regardless of how long they have been together or whether they have children. Although parents have financial obligations towards their children, there are no equivalent responsibilities towards a former partner.

In fact, under the law in England and Wales as it currently stands, such a couple would have no rights whatsoever to the assets or income of the other party following separation. Property would be divided in accordance with the strict legal ownership, regardless of the respective contribution of the parties. So if one party puts the house into his sole name, even though his partner may contribute to the majority of the household outgoings over the next 10 years, she will be entitled to absolutely no share of the property following their split.

Last month, the Supreme Court took a step towards recognising that the rights of long term unmarried couples should be commensurate with the rights of married couples; at least in relation to the receipt of state benefits for their children. A mother won her appeal against the decision of the Court of Appeal that she was not entitled to widowed parent benefits following the death of her partner of 23 years. The Supreme Court, declared the current law "incompatible" with Human Rights legislation, making the point that whether parents are married or not their responsibilities towards their children is the same. Whilst this is undoubtedly a positive step for the rights of unmarried couples, especially in cases of bereavement such as this one, it does not change the law as stated above.

It is, therefore, vital to highlight that this recent drive by the courts in England and Wales to recognise the rights of unmarried couples on death does not extend to recognition of their rights on separation. Yet, this ruling is the latest in a growing number of steps taken by the courts to extend the rights of unmarried couples as much as current legislation will allow. For example in January this year, the Court of Appeal ordered unmarried Ms Smith bereavement damages (a fixed amount paid to the spouse or civil partner of a person who dies following medical negligence) despite earlier court rulings that she should not be entitled to such award as she was unmarried following the death of her long-term partner.

These recent rulings are inevitably leading some to question whether this is part of a continued erosion of the inviolability of marriage. Alternatively, is this a case of the courts having to create - rather than simply to clarify - the law because of a vacuum of legislative clarity being provided by parliament, in spite of the persistent calls for such reform by the family law community over many years.

The Supreme Court indicated that it was now up to government to decide whether or how to change the law in this area. Surely it must now be time for parliament finally to take this issue in hand and consider whether it is now time to give unmarried couples, and the children of such relationships, the proper recognition and protection that they deserve?

However until such time as the law is changed unmarried couples should consider documenting any agreements reached over property and future rights. Here at Alison Fielden and Co we have the necessary expertise to assist with a "Living Together Agreement" or a "Deed of Trust" in relation to land. Agreements in respect of property and what should happen in the event of future

relationship breakdown are best reached when property is to be purchased but an agreement can be reached and documented at any time.

Both our Family Law Solicitors, Heather Weavill and Steven Barratt have many years of experience and can help guide you through the process. Please contact them on 01285 653261 for an appointment. Alison Fielden herself deals with property matters and can draw up any necessary Deed of Trust.