

The Will of the people?

As advisers, when we speak to someone for the first time in relation to the estate of a loved one, one of the first questions that we ask is whether the deceased was married or in a cohabiting relationship, ie, simply living together. The answer to this question has a significant impact on the advice that we can give to the individual about their position.

According to the Office for National Statistics, marriage rates for opposite sex couples are at their lowest on record having been in steady decline since the 1970s. It appears that more and more people are choosing to simply cohabit with their partner instead of marrying. In 2013, 114,720 marriages ended in divorce and the figures show that of the 249,133 people marrying in 2011, 56,796 of the men stated their previous marital status to be divorced. The statistics show therefore that there is a rise in the number of people choosing to cohabit and that a significant number of divorced people remarry. These figures indicate that society is increasingly moving away from “traditional” family models with an increase in alternative family structures. The law however has not adapted in line with these societal changes.

If an individual passes away without a Will, their estate will be distributed in accordance with the Intestacy Rules. If they were married, their spouse would inherit all or the vast majority of their estate depending on its size. Their children will not benefit at all unless the size of the estate is over a certain threshold. If the deceased were not married but had children, the children would inherit the estate. This will be the case even if the deceased was in a long term, co-habiting relationship. The starting point will be that the surviving cohabitee will not have any entitlement to the estate.

Unless made in contemplation of marriage, a Will is revoked when a testator marries. If the testator does not realise this and dies without making a new Will, their spouse will inherit under the Intestacy Rules. If a Will is made by a married testator benefitting his spouse, that gift is only nullified once a decree absolute is obtained. Therefore, if a testator dies whilst separated or even after a decree nisi has been obtained but before the decree absolute, the gift to the spouse will stand. These principles only apply in relation to marriage and divorce. They do not apply to the commencement and end of a cohabiting relationship.

The plight of cohabittees has again been in the news recently. Mr McMullen died suddenly in Northern Ireland in 2009 without making a Will. He left behind his long term cohabiting partner, Ms Brewster. He had paid into a pension policy but as he had not nominated Ms Brewster as his beneficiary, she did not benefit from it. If they had been married, this particular pension provided that she would have received the pension in the event that he had not left a nomination as his surviving spouse. Ms Brewster claimed that the refusal of the pension policy holder to pay out to her was discriminatory based on her marital status. The Supreme Court agreed and ruled that Ms Brewster should receive the pension. This ruling potentially has wide ranging implications for cohabittees facing similar situations concerning pension entitlements.

Time will tell whether the government will be prompted by this decision and the ever increasing diversity of family units to modernise the law concerning the rights of cohabittees. For now however, cohabittees who have not been left any inheritance by their partner must obtain specialist legal advice on their partner's death to assist them. They should do so as a matter of urgency after the death. Cohabiting partners who have not been left an inheritance by their partner often have claims with merit against the estate. Such claims are possible pursuant to the Inheritance (Provision for Family & Dependants) Act 1975 which is a piece of legislation that enables individuals to bring a claim for reasonable financial provision on the basis that they have received an insufficient amount/nothing on a loved one's death. They may also have alternative claims on the basis that they have generated a beneficial interest in a property or were promised an inheritance, for example.

Our Contentious Trusts and Probate Team at Meridian Private Client LLP are experienced at dealing with all manner of inheritance disputes. Our contact details are set out below:

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