

‘Common Law Marriage’ Do I have rights?



Sarah Beskine

Specialist Family Lawyer, collaborative lawyer and Mediator

Do you think you have a ‘Common Law Marriage’? People believe that if they have been living with their partner for several years, have a home and a shared life ‘they are’ in effect married or civil partners and have a defined legal status. This is a dangerous misperception: it has no recognition at all in law. You need to arrange matters between you, such as a written agreement, to ensure you are in a secure position if one of you dies or if you split up. I am a divorce/ family lawyer and mediator, and this article is relevant to unmarried couples or those without a Civil Partnership, and any friends who might be in that position.

Divorce and children law is a coherent legal system within which to resolve disputes about assets and children. Property, financial support and pensions can move from one partner to the other. Divorce laws protect you if you do not own the family home, and apply principles of fair division of assets. Unmarried partners have to rely on a web of overlapping and different laws to resolve disputes about assets, and they do not have anything like the automatic legal rights and status of married couples or those in a civil partnership.

If you are divorcing, we start from an assumption that assets should be shared equitably if there is enough to cover everybody’s needs. There is no such assumption if you are not married. It will depend in part on the legal form of joint ownership you chose when you bought the property, and your intentions at that time. One form leads to an assumption of sharing assets equally; the other assumes your share reflects the money you contributed.

If you are married, (or separated but not divorced), but do not have a Will, your partner will inherit all your personal property and belongings up to £250,000 of the estate, and half of the remaining, and the rest goes to any children.

If you are not married, your children/ grandchildren inherit. If you have none, it goes to your parents, then sibling, and eventually the crown. Your partner does not inherit. There are options to challenge this - in effect a ‘post death will’ if all the prospective beneficiaries agree so that your partner has a way of eventually establishing they should inherit. This is not straightforward - and if the children are under 18 and cannot give their consent, it means it has to go through court. There are also potentially serious tax implications with inheritance if you are not married which you might wish to provide for.

It is a good idea to review the way you own property, and your arrangements for how you want your assets to be inherited should you predecease your partner or vice versa, or you split up. It is important not to assume that just because you lived together for decades, the law will act as if you are married and your partner will inherit.

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Hopkin Murray Beskine
www.hmbsolicitors.co.uk

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