



The myths leaving unmarried couples financially exposed



Marriage rates fell to their lowest level on record in 2020¹, and with divorce rates also rising², it's no surprise that unmarried cohabiting couples were the fastest growing family type over the last decade³.

But while many of these couples believe they have similar, if not identical, legal rights to married couples, the truth is far more complicated. As a result, tens of thousands could be unknowingly exposing themselves to higher tax bills.

The common law marriage myth

There is no single, legal, definition of cohabitation in the UK. In England and Wales, it is defined differently depending on the specific context. In Scotland, it means either member of a couple who are (or were) living together as if they were married or in a civil partnership while in Northern Ireland the law does not legally recognise couples who live together.

However, research in 2019 found that a staggering 46%⁴ of the total England & Wales population believe in the so-called 'common law marriage' myth – the belief that after a certain amount of time of living together, the law treats them as if they were married or in a civil partnership.

While married couples and civil partners have certain legal rights and entitlements upon divorce or death, unmarried partners have no rights, relying on property, trust and contract law.

The consequences of this can be profound, as it can impact on spousal maintenance payments on separation, tax reliefs and allowances, State spouses' pension and bereavement benefits, property owned tenants-in-common, assets on death, life assurance payments and IHT planning.

While reform of cohabitation law was first proposed in 2007, it has consistently been rejected by various Governments to date.

Inheritance Tax consequences

Unmarried couples, especially those without a Will, are far more likely to pay inheritance tax for several reasons.

The first is that there is no spousal exemption on lifetime transfers or death, meaning all assets, including joint tenant's property, left to the surviving unmarried partner whether by Will or right of survivorship will use up the deceased's personal nil rate band, potentially creating IHT on both first and second death.

No residence nil rate band is available where property is left to the surviving unmarried partner, because it is not closely inherited by a lineal descendant, i.e. children.

On top of this, there is no transferable unused personal or residence nil rate band between unmarried couples – meaning the surviving unmarried partner only has up to £500,000, rather than £1m, which further increases the likelihood of inheritance tax on second death.

Ironically, property owned on a tenants-in-common basis may be better suited for unmarried couples with children, as when the share of the property passes to the children the residence nil rate band can be used.

Of course, it would be far better to plan this by making a Will, which avoids intestacy rules and associated delays, and ultimately ensures the right beneficiaries receive the right assets.

The intestacy myth

It is estimated that over half of the UK adult population – approximately 30 million⁵ – don't have a Will. If there is no Will, then the estate will be distributed according to intestacy succession rules⁶, and while the amount that surviving spouses and civil partners can receive in England & Wales has increased to £322k this year, unmarried partners receive nothing.

Despite the myths, there are still many circumstances where surviving partners (or spouses) will not automatically inherit all assets on death. In fact, if the deceased had children from a previous marriage only, they would be in line to inherit first, followed by the deceased's parents, siblings, half-siblings, grand-parents or aunts/uncles and then the Crown, leaving the surviving unmarried partner with nothing.

Property⁷

If owned on a tenants-in-common basis, both partners own different shares of the property and can pass on their share in their Will. However, if they die intestate, it forms part of their estate value and follows the intestacy succession rules above.

In this case, if the deceased had children from a previous marriage and/or with their surviving unmarried partner, the children would be in line to inherit first, in equal shares. What would happen if the grown-up children from the previous marriage wanted to sell, or charge rent on their share?

For property owned on a joint tenant's basis, both owners have equal rights to the whole property (although neither has a specific share in it) and on death it automatically passes by right of survivorship to the other owner, irrespective of whether they are married or not, and regardless of a Will or intestacy rules. This ensures the surviving unmarried partner stays in their home.

However, in both scenarios there are inheritance tax implications, which introduces another layer of complexity.

How to escape the unmarried tax trap

In the absence of getting married, the key planning points for couples are:

- Consider a cohabitation agreement to agree the division of assets on separation.
- Make a Will to agree who the assets will be left to and the rights of the surviving unmarried partner (to live in the property).
- Consider the basis of property ownership (to maximise residence NRBs).
- Consider use of a protection policy in trust (to meet any IHT liability).

However, care must be taken if using joint life protection policies, because in the absence of the spouse/civil partner spousal exemption, there's a risk that a share of the policy could be deemed as

being inside the estate of the first to die. To avoid any doubt whatsoever, they could each consider taking out a single/own life policy in trust, avoiding the issue and effectively getting twice the amount of cover.

As marriage rates continue to decline and with the rise of more complicated modern-day blended families, an even greater focus on estate planning is required for unmarried couples – be they young or older, so-called silver splitters. Advisers therefore have a crucial role in helping these customers avoid foreseeable harm by discussing the implications and planning options available, while at the same time helping build relationships with both solicitors and the next generations of the customers' family.

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Sources:

1 - Marriages in England and Wales: 2020

2 - Divorce

3 - Families and households in the UK: 2022

4 - <https://commonslibrary.parliament.uk/research-briefings/sn03372/>

5 - <https://committees.parliament.uk/publications/23321/documents/170094/default/>

6 - Will ownership in the UK or Half of UK adults don't have a Will

7 - www.theprobateservice.org/interstacy-rules-flowchart/

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