



AUTHOR / KEY CONTACT



Parisa Jones
Partner

✉ parisa.jones@la-law.com
☎ 01202 786267

Wills for Unmarried Couples – Know Your Legal Rights

A growing number of couples are living together unmarried, according to the latest [research](#) from the Office for National Statistics (ONS). However, it remains a common misconception that cohabiting couples have the same legal rights as those married or in a civil partnership.

If you are living with a partner, it is important to know your legal position and take steps to protect yourself and each other.

Common-law marriage

Despite popular belief, in the UK, there is no such thing as a “common-law marriage” or a “common-law spouse”. The law does not take into consideration how long you have been together, whether you have children and how committed your relationship is.

Do you need a will if you're not married?

Yes, if you are a cohabiting couple, and especially if you have children, it is vital to make [Wills](#). If you do not make a Will, the rules of intestacy will apply to your estate. This means that the law sets out who should administer your estate, who will inherit it, and to what extent.

The rules of intestacy do not make any provision for unmarried partners. The only way you can make provision for your partner is to make a Will. You should consider:

- Who you want to administer your estate;
- The appointment of guardians for children under the age of 18;
- The extent you want your partner to benefit. Do you want to leave them assets outright or, for example, the right to continue living in your home?

If you were to die without a Will in place, a partner could make a claim on your estate. This can be expensive and can cause a lot of stress and upset for those involved.

Inheritance tax for unmarried couples

Married couples or those in a civil partnership enjoy:

- Spousal exemption – assets can pass between the couple without any inheritance tax;
- A transferrable nil rate band. This means if the nil rate band (the maximum amount that can be left free from inheritance tax) is not used when the first spouse passes away, it can be claimed on the second death; and
- An extra allowance based on the ownership of residential property. Subject to meeting strict criteria, there may be a residence nil rate band and transferrable residence nil rate band to be claimed.

For an unmarried couple wanting to provide for each other, there is only a nil rate band available and this cannot be transferred to a surviving partner.

It is advisable for unmarried couples to seek [inheritance tax advice](#) and plan their estates accordingly. An inheritance tax bill can mean a surviving partner is unable to maintain their standard of living or to continue to live in their home.

Property ownership for unmarried couples

For many people, the family home is the biggest asset. When buying a property with a partner, you can protect your interest via a Declaration of trust. A Declaration of Trust is a binding agreement that records how the property was bought, your agreed share of the property and who is to get what from any future sale. It can simply set out how net sale proceeds will be divided or be more comprehensive and set out each party's rights and responsibilities.

If the property is only owned by one party who proceeded to pass away, this would impact the survivor's right to live in the property after the owner's death. It is therefore important to ensure that the survivor has defined rights in respect of the property.

For more information and advice, please contact Lester Aldridge to speak to one of our experienced wills and probate solicitors at online.enquiries@LA-law.com or call on 01202 702612.