

The Myth of the Common Law Marriage

The term “common-law marriage” is used to describe a long-standing relationship between an unmarried couple who live together.

However, contrary to popular belief, there is no such thing as a ‘common law marriage’.

In England and Wales, the assumption held by many unmarried couples in a long standing relationship is that they have acquired rights similar to those of married couples (or those in a Civil Partnership). This is completely wrong and a worrying misconception. An unmarried couple or, shall we say, a couple in a “common law” marriage do not have the same legal rights or protections as those who are legally married or in a civil partnership. For example, when a legal marriage ends (i.e. on divorce) there are special rules about how finances are shared and divided up. Unfortunately, these same rules do not apply to an unmarried or common law couple which can lead to unfair or unjust results.

Another misconception surrounds what happens when an unmarried person in a common law marriage dies without leaving a valid Will? If they leave a Will, then their estate will be dealt with and distributed in accordance with the provisions of the Will. However, if they have not left a Will, then their estate will be distributed in accordance with the Intestacy Rules which strictly dictate who will inherit the estate. Under the Intestacy Rules, a partner in a common-law relationship (so, for example, an unmarried couple) is not entitled to benefit from the deceased’s estate at all!

For example, the classic example of a common law marriage is a couple who may have been co-habiting together for, say, 30 years or more but have never got married. Using this example, if one of them dies without leaving a valid Will then, the survivor will not be entitled to benefit from the deceased’s estate. Instead, the intestacy Rules would set out which relatives will benefit from the estate – even if the deceased person did not want these relatives to inherit. The same situation would apply to a same-sex couple. As you can imagine this can cause tremendous distress and upheaval particularly for the survivor who could then be left in a financially difficult position. This problem would be compounded further, if the property in which the couple lived, was owned outright by the deceased – as the property would pass to the relatives and not the survivor.

The simple answer is to make a Will without delay to ensure that, upon your death, your estate will pass to the correct person(s). Don’t get caught out by the myth of common-law marriage!

If you would like any advice in connection with the above, please contact James Rousell,
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