

Essential Estate Planning Facts For Unmarried Couples



BLANDY & BLANDY
solicitors

Guides & Advice

Essential Estate Planning Facts for Unmarried Couples

Over recent years there has been a significant increase in the number of unmarried couples living together. It is a common misconception that an unmarried partner attains various rights as a “common law spouse” after living long term with their partner. There is in fact no such concept in UK law. As such couples have very limited rights on the death of one of the partners and also as the tax position of such couples is very unfavourable on death, it is essential that they make suitable estate planning arrangements.

The following very brief summary of the issues relating to such couples illustrates the importance of putting appropriate arrangements in place;

The Intestacy Rules

Under the current Intestacy rules an unmarried partner does not have any automatic rights to any of the assets owned by their partner, which leaves them in a very vulnerable position. If, however, the couple have children, those children will have an automatic entitlement under these rules, but this will of course not be of direct benefit to the surviving partner.

The position for the survivor is improved if any of the assets are owned by the couple as joint tenants. Such assets will pass automatically to the survivor, by virtue of the doctrine of survivorship, on the death of the first partner irrespective of the intestacy rules.

The strict application of these rules will in many cases cause injustice and hardship. It is therefore vital that unmarried partners both make a Will.



Miscellaneous Rights

If a surviving unmarried partner is left with insufficient funds on the death of their partner their only possible legal redress is for the surviving unmarried partner is to make a claim under the family provision legislation contained in the Inheritance (Provision for Family and Dependents) Act 1975 (as amended). However, such a claim is not ideal as it will involve an application to the court which can be emotionally and financially draining. Additionally, the court has only very limited powers in relation to such claims.

Inheritance Tax ("IHT") Position

Unmarried couples do not benefit from spouse exemption, for IHT purposes, in relation to the assets which are gifted by one partner to the other. Accordingly, an IHT charge will arise on any assets which the surviving partner inherits, in excess of the nil rate band for IHT purposes, currently £325,000, at a flat rate of 40%.

By comparison, transfers between spouses benefit from spouse exemption with the result that an IHT charge will not arise regardless of the value of such assets.

A further disadvantage is that unmarried couples do not benefit from the transferrable nil rate band provisions. Accordingly, if the nil rate band is not used on the death of the first partner, perhaps due to the fact that they do not have sufficient assets in their estate, this part of the nil rate band will be wasted. It may therefore be relevant to equalise the estates of the couple.

Will Structure

In view of the fact that an unmarried couple does not benefit from spouse exemption, any assets which pass through both estates will potentially be subject to a double charge to IHT. This potential "double charge" could be avoided if the Will of the first partner is suitably drafted, by the incorporation of a discretionary trust of the residuary estate. Such a structure would not affect the IHT position on the first death, however, an IHT saving would be achieved on the second death. Although the surviving partner could be a beneficiary of the discretionary trust, the assets of the trust would not form part of their taxable estate on their subsequent death, thereby achieving an IHT saving at this point

Life Insurance Arrangements

If a life insurance policy is payable to the deceased's estate it will be subject to IHT, even if the deceased's will provides that it passes to the surviving unmarried partner. In the case of a married couple such an arrangement would of course benefit from spouse exemption, thereby avoiding an IHT charge.

If, however, the policy is written in trust, one of the beneficiaries of which could be the unmarried partner, an IHT charge could be avoided provided the arrangement was structured correctly.

Pension Death Benefit Trusts

The majority of pension arrangements are structured so that any lump sum death benefits payable under the scheme are paid at the discretion of the scheme trustees. As a result such payments will not be subject to IHT as part of the deceased's estate. In many instances such payments are of a substantial nature and once they are paid to the survivor they will form part of their IHT estate. Accordingly, it is more IHT efficient to structure the payment so that it is made to a suitable trust structure which will then shelter the payment from IHT on the survivor's death.

Cohabitation Agreements

In cases of relationship breakdown unmarried couples have very limited rights. In view of this it is advisable to have a cohabitation agreement in order to cover the financial position of the parties if the relationship fails. The courts can enforce such agreements as they are regarded as binding contracts between unrelated parties.



Contact us

If you would like to speak to someone about our services or discuss your situation, please contact

Graham Benwell Partner and Head of private Client

T: 0118 951 6841

E: graham.benwell@blandy.co.uk

Jonathan Gater Partner

T: 0118 951 6848

E: jonathan.gater@blandy.co.uk

Caroline Casagranda Associate

T: 0118 951 6932

E: caroline.casagranda@blandy.co.uk

Carli Colby Associate

T: 0118 951 6845

E: carli.colby@blandy.co.uk

Nadine Jayes Solicitor

T: 0118 951 6912

E: nadine.jayes@blandy.co.uk

Catherine Diamond Solicitor

T: 0118 951 6940

E: catherine.diamond@blandy.co.uk

Sarah Hookway Legal Executive

T: 0118 951 6947

E: sarah.hookway@blandy.co.uk

Blandy & Blandy LLP does not assume legal responsibility for the accuracy of any particular statement contained in this guide. In the case of specific problems we recommend that professional advice be sought.

