

Intestacy rules may be changed to allow cohabitants to qualify

A consultation paper published by The Law Commission has suggested a number of reforms to the existing law of intestacy and provision for families and dependants on death. The consultation document considers that the current law "...causes hardship for cohabitants and is out of line with public opinion". The number of UK marriages is rapidly falling whilst cohabitation is increasingly popular. In the ten years to 2006 the number of cohabiting couples increased by some 65%. Some 4/5ths of cohabiting couples have not made a Will and the impact of the current intestacy laws upon such relationships is therefore significant. Currently if a cohabiting partner dies without making a valid Will the survivor of the relationship is entitled to nothing from the deceased's estate. By contrast a surviving spouse has an entitlement to a minimum of £250,000.00 with further rules applying if the estate exceeds that amount.

A new definition of cohabitant is proposed for the purposes of the intestacy laws to provide for a person who immediately before the death of the deceased was living with him/her as a couple in a joint household but was neither married nor a civil partner of the deceased. Where cohabitants have had children it is suggested that there should be no minimum cohabitation period and that the surviving partner should have the same entitlement under the intestacy rules as a spouse. Where there have been no children of the relationship it is considered that the surviving cohabitant should have the same entitlement as a spouse if cohabitation had continued for at least five years before death. Where cohabitation had existed for between two and five years before death the surviving cohabitant would have an entitlement to one half of the amount which a spouse would have received from the estate.

Consultation closes on 28th February 2010. The proposals have been attacked by many who see them as another blow to the sanctity of marriage. The consultation

paper is available on the Law Commission website (www.lawcom.gov.uk/current_consultations).

The problem can be entirely avoided by making a Will in all circumstances. For further advice call Geoff Dootson (geoffdootson@hhlegal.co.uk) at our Southport office on 01704 531991 or Gordon Hatton (gordonhatton@hhlegal.co.uk) at our Ainsdale office on 01704 577171.

