

## Cohabiting couples could be granted improved inheritance rights

Cohabiting couples who have lived together for five years could be given the same rights as married couples to inherit their partner's estate if he or she had failed to make a will.

The proposal has been put forward by the Law Commission as part of a major overhaul of the law relating to wills and intestacy. The Commission points out that many cohabitants believe they already have the same rights as spouses but this is not the case.

As the law stands now, if a person dies intestate – that is, without having made a will – then their cohabiting partner has no automatic right to inherit the estate.

Instead, the estate will be divided using a complex process laid down by law. This is the case regardless of how long the couple had lived together and even if they had children together.

In some circumstances, the surviving partner may be able to go to court to challenge the distribution of the estate but it can be difficult and emotionally draining, especially for someone who is still grieving for the loss of their partner. The Commission is therefore proposing that couples who have a child together or who have lived together for five years or more should have the same rights on intestacy as spouses.

It also proposes that childless couples who lived together for more than two years but less than five should be entitled to half of the share of the estate that a surviving spouse would receive. However, the surviving partner would not receive anything under the intestacy rules if the deceased was still married or in a civil partnership at the time of death. The Commission also proposes changes relating to married



### Rules relating to spouses may also change

couples. It says: "Where the deceased is not survived by any children (or grandchildren or great-grandchildren), his or her spouse is entitled to everything in the estate up to a maximum of £450,000 but must share anything over that sum with any surviving parent or any surviving brother or sister of the deceased. We have proposed changes to the intestacy rules so that a surviving spouse would inherit the whole estate in such cases."

There are several other proposals and the Commission has launched a public consultation which runs until February. It's hoped that a draft Bill will be produced within two years.

If the proposals are adopted they will provide the biggest shake-up of intestacy rules for many years and will provide more protection for many people, particularly cohabiting couples.

However, the best way for couples to protect their interests, whether they are married or not, is simply to draw up a will and keep it up to date. That removes all uncertainty and enables you to ensure that your estate is divided exactly according to your wishes.

Unfortunately, tens of thousands of people die each year without having made a will. That's when the uncertainty and the problems arise for their families and loved ones.

Please contact us if you would like more information about making a will.

## Two new Partners to add to the team!

Laurence Harrison specialises in civil litigation matters for both private individuals and business clients. He joins Moseleys Solicitors after working across the Midlands for over 20 years and deals in partnership disputes, contested probate matters, commercial contract litigation and property, including landlord and tenant matters.

Erica Burt-Moore has been promoted to Partner following two years with the firm, working as a private client solicitor. Her area of expertise covers wills, probate, lasting powers of attorney and

elderly client work in addition to estate planning and trust work.

Senior Partner, Robin Heslop said, "We are delighted to appoint both Laurence and Erica as partners. Their expertise further strengthens the service we offer to our clients and I know they will be a great asset to our team."

The new appointment of Laurence and Erica brings the total number of Partners in Moseleys to ten. The firm was established over eighty years ago and retains its position as one of the leading solicitor practices in the area.





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## PARTNERS:

- Robin Heslop
- Martin Cox
- Jonathan Smith
- Terry Moore
- Sarah Attack
- Audrey Hunter
- Jonathan Cunningham
- Victoria Ellis
- Laurence Harrison
- Erica Burt-Moore

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# Judge was wrong to grant residence order

The Court of Appeal has ruled that a judge was wrong to transfer the residence of three children to their father even though the mother had refused to allow contact in the past.

The father had made an application for contact following the breakdown of the marriage. The mother made allegations about him relating to domestic violence and submitted that he should be barred from having contact.

The judge dismissed the allegations as unfounded and ordered that contact rights

should be granted. The mother still refused so the father applied for a residence order. Shortly before the trial, the mother relented and signed a statement admitting that she had been wrong to refuse contact and accepting that the court should grant a contact order.



However, she also asked the court to confirm that the children should continue living with her. The judge decided that he could not rely on the mother's new

assurances and ordered that residence should be transferred to the father.

However, that ruling has now been overturned by the Court of Appeal. It held that transferring residence from the primary carer in this way should only be done as a last resort.

The court had to balance the risks of removing the children from their primary carer, their mother, against the possibility that she might refuse contact again in future. The judge had got that risk balance wrong and the residence order he made was premature.

# A better way to buy and sell our homes?

The Law Society is looking at ways to improve the process of buying and selling homes for the benefit of consumers.

It has been working on formal proposals and consulting with various individuals, firms and organisations involved in conveyancing to get a full picture of all the issues involved.

The general consensus from most professionals was that while no radical changes are needed, there are some improvements that could be made, particularly in the area of accreditation schemes.

The Law Society has often raised concerns that some professionals involved in conveyancing, such as estate agents, are not strictly regulated in the way that solicitors are.

This has led the society to warn sellers that they may not always get the best service or value for money, particularly when paying for Home Information Packs (HIPs) which have to be provided when a house is put on the market. A Law Society spokesman, Paul Marsh, urged

consumers to approach their solicitor before buying a HIP because law firms are strictly regulated and are required to be fully open with clients about their fees etc.



This would ensure that the HIP contained all the necessary information and was priced fairly. He also advised sellers to consult their solicitor before filling out Property Information Questionnaires (PIQs) which are now an obligatory part of HIPs.

Mr Marsh said: "PIQs are supposed to provide information for potential buyers about the property, but if they are not completed correctly it could harm the relationship between buyer and seller.

"A solicitor will be able to assist in completing the questionnaire to ensure it is accurate. The professional integrity and legal skills which solicitors traditionally bring to the housing market are just as key now as they have always been and probably more important than ever."

# Man receives damages after falling on stones

A 64-year-old man who broke two bones in his leg after tripping on loose stones has received nearly £8,000 in compensation.

The man had been walking his dog when he fell over the stones on some land near the back of his home.

He broke the tibia and the fibula in his right leg. As a result of the injuries he can now only walk

about three quarters of a mile and finds it difficult to kneel down. He has had to give the dog away because he can no longer take it for walks.

The land where the fall took place belonged to the same community association that owned the man's home. He alleged that the association

had been negligent in allowing the area to reach such a dangerous state of disrepair

and in allowing people to walk through when it was unsafe to do so. The association admitted liability and agreed to pay £7,875 to compensate for the man's pain, suffering and loss of amenity.

Anyone who suffers an injury as a result of someone else's negligence is entitled to claim compensation. Please contact us if you would like more information.

Please contact us if you would like more information about the issues raised in this newsletter or if you need advice on any other legal matters.

Our newsletters are designed to highlight legal developments. They should not be taken as a comprehensive analysis of the law. Clients should always obtain professional advice before making decisions on legal matters.