



# Living together and blended families:

A legal guide for unmarried couples



**Attwaters**  
Solicitors

**According to the Office for National Statistics (ONS), the number of marriages taking place in England and Wales decreased by 36.6% in the 30 years to 2019. There are many reasons for this.**

Firstly, there is simply less societal pressure to get married these days, mostly because sex before marriage and having children 'out of wedlock' are no longer seen as shameful or sinful practices in our country. People are also less willing to shell out thousands

of pounds for a big white wedding, preferring to save up their money for a deposit on a home or simply to enjoy a better standard of living. Others are waiting until later in life to get married, while others still are divorced and don't wish to marry again.

Whilst we at Attwaters Solicitors believe that there is absolutely no need to get married if you don't want to, we also think it is important to raise awareness of the legal situation unmarried couples face. Contrary to popular belief, 'common law' marriage – i.e., living together and

presenting to society as a married couple without an official marriage certificate – is not a legally recognised marital status in England and Wales. This means that if you are not married or in a civil partnership, you could be on shaky ground legally if you were to split up with your partner or one of you were to die unexpectedly.

In this guide, we will use the terms 'married' and 'unmarried' for the purposes of simplicity; however, please note that the information below also applies to civil partnerships.

## Married vs. unmarried – your rights

When you marry in England and Wales, this gives you certain rights when it comes to your spouse's finances, property and other assets.

### If you are married:

- You will inherit all or some of your spouse's estate if they die without leaving a Will (otherwise known as intestacy), depending on what it's worth
- Subject to probate, you may also be able to withdraw funds from your deceased spouse's bank account.
- You both have a legal right to live in the marital home, no matter who owns it or pays the mortgage, until a divorce court decrees otherwise
- You have to get divorced to formally end your marriage
- Both parties have a legal right to a share in the marital assets – this could be property, money, pensions or investments – if you get divorced
- You can usually transfer assets to one another without incurring Capital Gains Tax or Inheritance Tax
- Both parents automatically have parental responsibility of their children.



### If you are unmarried:

- You will not automatically inherit your partner's estate if they die without leaving a Will – but you may be able to make a claim on their estate if you were living with them for at least two years prior to their death
- You can't claim ownership of your partner's property if you split up, although you may be able to claim a beneficial interest in the property if you can prove you have contributed towards the mortgage or have made other financial contributions
- You can separate without any formal legal proceedings
- However, you won't have the right to a share in your partner's assets if you split up – even if you have been living together for a long time
- You won't be entitled to spousal maintenance, but you may be entitled to child support if you share children together
- You won't enjoy any of the tax benefits married couples are entitled to
- The father only has parental responsibility for your children together if he is named on the birth certificate.

All in all, the legal situation for unmarried couples is precarious. Even if you have been together for many years and are 'married' in all but name, there is little legal recognition of your shared life together. Although there is some scope for claiming a share in your partner's inheritance or property through the courts, this can be a long and arduous process and there is no guarantee of a positive outcome.

**The answer? A living together agreement.**



## Living Together Agreements

A Living Together Agreement (or Cohabitation Agreement) is a legally binding document which allows an unmarried couple to set out their financial rights and responsibilities towards one another.

### It can include:

- Who owns the property you live in
- If you have bought a home together, what deposit you both paid
- The share of the rent/mortgage and bills you will each pay
- The percentage of the property you are each entitled to if your relationship ends
- How your assets will be divided if you were to split up
- Who is responsible for any debts
- Who you want your next of kin to be
- Any insurance policies such as a life insurance policy.

This document is only legally binding if it is properly written and executed as a deed. We'd therefore strongly recommend that you draw up your Living Together Agreement in the presence of a solicitor. As your circumstances change, we'd also recommend reviewing your Agreement regularly to ensure it still reflects your financial situation and wishes.

## Making a Will

As we have explored, unmarried couples have no automatic right to inherit their partner's estate if one of them passes away without a Will.

This is also known as dying intestate. Sadly, many surviving partners miss out on what they feel they are rightfully entitled to simply because the deceased just assumed that they would inherit their money and property.

However, intestacy laws are very strict and an unmarried person's estate will instead go to children, grandchildren, parents or even more distant relatives such as aunts, uncles and cousins.

By making a Will and naming your partner as your beneficiary, you can avoid the heartache and conflict your partner could face if you were to pass away unexpectedly.

Again, a Will must be properly executed in order to be legally binding and to avoid contentious probate claims.

A DIY Will has a greater chance of being declared invalid due to ambiguity or improperly written terms – which would then take your partner and family back to square one and your estate may be distributed according to intestacy laws anyway. We'd therefore highly recommend that you consult a solicitor to ensure your Will is properly drafted, signed and witnessed.

# Unmarried couples and blended families

Families these days come in all shapes and sizes. Unmarried couples may have ex-spouses and children from previous relationships, in addition to children together. With ex-spouses, step-parents, step-children and half-brothers and -sisters in the mix, ensuring your assets are distributed according to your wishes after death has never been more important.

**So, what could happen in a blended family if one of you dies without a Will?**

- If you are separated – but not divorced – from your husband or wife and have a new partner, then your ex will likely inherit your estate and your current partner could get nothing.
- If you have remarried and your current spouse inherits your estate, they could disinherit your children from a previous marriage.
- Your step-children will only be able to inherit if you've formally adopted them.
- Your unmarried partner could be forced to move out of your home.

All in all, it's best to have a Will professionally drawn up by a solicitor to ensure that your wishes are fully respected upon your death.

A solicitor will also be able to advise you on other ways to protect your family and ensure that your beneficiaries receive what they are entitled to, for example by:

- Holding funds for your beneficiaries in trust
- Making lifetime gifts
- Holding property as tenants in common rather than as joint tenants (this allows each owner to leave their share of the property to somebody else in their Will).



## How Attwaters Solicitors can help

Attwaters Solicitors' Family department comes highly commended by industry recognised legal publications including **The Legal 500** and the **Chambers and Partners UK Legal Guide**.

We are members of Resolution and are also accredited by the Law Society's Family Law Accreditation Scheme. And we work seamlessly with other departments in our firm, including our Wills & Probate and Trust & Tax departments, to ensure that you and your family are fully protected against whatever might come your way – irrespective of your marital status.

**We can assist you with:**

- Living Together and Cohabitation Agreements
- Declarations of Trust
- Wills (including Wills in contemplation of marriage)
- Trusts
- Prenuptial Agreements
- Lifetime gifting and Inheritance Tax
- Separation
- And much more.

**To get started on your journey towards protecting yourself, your partner and your family, please do give us a call on 0330 221 8855 or email [familylaw@attwaters.co.uk](mailto:familylaw@attwaters.co.uk).**

Please note that the information contained in this guide is intended as guidance only, and should not be construed as legal advice. Should you be experiencing any of the issues outlined in this guide, please seek professional legal advice.

### Where we are

■ Hertford ■ Ware ■ Loughton ■ Harlow (by appointment only) ■ London (by appointment only)

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