

Dear Barbro!

with Barbro E. Stalbecker-Pountney
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Q I'm in shock! I just found out that dad and mum aren't married. They've been together since I was born (fifty-three years ago!) but never actually tied the knot. And my son is now living with a new girlfriend and her little boy. Doesn't anyone get married anymore? What I need to know is, how does all this affect my parent's estate and me? As far as I know, they've never done anything in writing because they think that all will go to each other, and when they both have died, to their children. Are common law spouses treated the same as legally married couples when it comes to inheritance? *An old fashioned girl*

Dear old fashioned: Yes, life used to be simpler – we can no longer assume that a family will be a legally married couple with two children. With our high divorce rate, second families and the number of couples cohabiting without a marriage licence there are issues to resolve in sorting out and planning the best way to deal with family assets and death.

As our lifestyles are changing, so are our laws. While tax and pension law may treat non-married spouses in the same way as those legally married, family law legislation in Ontario does not. In Ontario, the Family Law Act provides support rights to dependants,

including certain cohabiting couples, but makes no provision for property rights between unmarried spouses.

A person who dies without a will is called an "intestate". An unmarried spouse of an intestate has no property rights under Ontario's Family Law Act or the Succession Law Reform Act, which deals with distribution of assets on death. A unmarried spouse currently has no right under this scheme of distribution, but may claim a right to support if dependant.

I needn't point out the problems that can arise when claims of children from a first marriage conflict with claims of a "common law" spouse. But there are ways to protect all parties and to make sure that the wishes of the deceased will be followed. These include a properly drafted Will and, in some cases, a properly drafted Cohabitation Agreement. Such an agreement can ensure that the overall estate plan made together by both parties is respected and not changed by the surviving partner after the other dies.

Discuss this with your parents so that they can make sure their wishes are carried out. Encourage them to get Wills completed, both for the sake of each other and for their family members. n

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