



For Life

NEWS AND ADVICE FROM BIRKETT LONG



FAMILY



Common law husband or wife

Advice on this fictitious concept.

Whose baby is it anyway?

Navigating the complexities of starting a family in same sex relationships.

Inheritance tax

We've come a long way since 2003 but inheritance tax still exists.

Supporting LGBT employees

There is always more to be done.

Common law husband or wife

There is no such a thing as a common law husband or wife. Many people are left in a difficult position following their partner's death having relied on this fictitious concept.

If you have provided for your partner by making a will, and named them as a beneficiary, then it's likely all will be fine and it doesn't matter if you are not married or in a civil partnership. If you haven't and you are not, then your property and possessions (your estate) will go to your family (parents, brothers, sisters or other close blood relatives) under rules laid down by the law, known as the rules of intestacy.

Your partner will have to rely on your family to agree to vary these rules to ensure that they are provided for. If an agreement cannot be reached, your partner will have to make a claim under the Inheritance (Provision for Family and Dependents) Act 1975 to receive something.

This Act allows the court to make financial provision from the estate for

those living as husband and wife with the deceased just before death and for those who were financially dependent on the deceased. However, the court will only award to the surviving partner what it considers a reasonable financial provision for their maintenance and so there is no guarantee that they will actually receive what the deceased would have wished them to have.

The last thing that anyone grieving the loss of a loved one wants to deal with is an application to the court, with the cost and uncertainty involved, and for their opponents to be their late partner's family.

To avoid this situation, the best thing for all couples, regardless of your sexuality, is to make a will and keep it up to date. But if not, then the survivor should take legal advice as soon as possible because

claims under the Inheritance (Provision for Family and Dependents) Act 1975 must be issued in court within 6 months of the grant of probate or letters of administration being made.

Our Contested Trusts and Probate Team at Birket Long has experience in dealing with will and inheritance disputes. If you would like to find out more about how we can help you, please contact us.

Amanda Smallcombe
01206 217395
amanda.smallcombe@birkettlong.co.uk

The number of same-sex families in the UK has been increasing steadily since 1996. The most common status of LGBT families is cohabitation followed by civil partnerships and then marriage. Of those families, 18,000 include dependent children.

Same-sex families: so whose baby is it anyway?

Parenthood is no longer confined to parents of the opposite sex. There are many different ways in which a couple may choose to have children together including; surrogacy, artificial insemination (whether through a licensed clinic or not) and adoption.

The manner in which the child is conceived and the legal status of

the relationship between the parents can have huge ramifications on the parent's rights and responsibilities in respect of the child. For example, it is the legal parents that are entitled to be named upon the birth certificate. They are entitled to make applications to the court in the event of disputes concerning the child (a relationship breakdown for example). They are



We've come a long way since 2003, but inheritance tax still exists!

In 2003, Essex Pride was established. Thankfully, with the introduction of the Civil Partnership Act, civil partners are treated equally as spouses.

This means that whether you are in a marriage or civil partnership you are able to leave your estate to each other without paying Inheritance Tax and transfer any of your unused nil-rate band, under which Inheritance Tax is charged at 0%, for them to apply to use against their estate when they die. Depending on the terms of your will, your partner could also utilise your Residential Nil Rate Band, an extra tax allowance of £150,000 (tax year 2019/20).

As Amanda explained, if you are unmarried or are not in a civil partnership then, without naming your partner as a beneficiary under a will, they will receive nothing from your estate without bringing a claim. Aside from the emotional impact that these provisions can have, it could also lead to significant inheritance tax planning opportunities being lost.

If you would like to discuss your inheritance tax arrangements, please contact our dedicated team.

Lisa Cox

01206 217307

lisa.cox@birkettlong.co.uk

financially responsible for the child. The status of the parent can also affect the child's inheritance rights.

The woman who carries the child and gives birth will always be considered the legal mother unless parental status is removed following a parental order after surrogacy or adoption.

The other legal parent will depend upon how the child was conceived.

If the child was conceived as a result of sexual intercourse, the biological father will be the legal parent.

If the child was conceived following artificial insemination taking place outside a licensed clinic after 6 April 2009, then if the mother was married or in a civil partnership and her wife/civil partner agreed, her wife/civil partner will be the other legal parent. If they

were not, or she did not agree, then the biological father would be considered the legal parent.

If the artificial insemination takes place in a licensed clinic, then so long as they sign the correct forms, the birth mother and her partner will be the legal parents.

Male couples seeking to become parents will need to either use a surrogate or adopt. Surrogacy is where a woman agrees to carry and give birth to a child for a couple who will become the child's parents after birth. Following the birth, the intended parents must apply to the court for a parental order, following which they will be regarded as the child's legal parents.

Finally, adoption is a formal process, which changes the identity of the child's legal parents.

The laws surrounding same-sex parents are complex. If you are thinking of starting a family, or already have one, and are concerned about where you stand, our team of specialist family lawyers are here to help.



Karen Johnson

01206 217305

karen.johnson@birkettlong.co.uk



Supporting employees

In recent times, gender pay, sexual harassment and especially mental health in the workplace have been under the spotlight for good reason and with positive effect. However, there is always more to be done.

In July 2017, the government carried out the largest national survey of the LGBT community at that time. The results, relating to the workplace, included:

- 19% had not been open about their sexual orientation or gender identity in the workplace
- 23% had experienced negative or mixed reactions in the workplace due to being LGBT or because they were perceived to be LGBT
- 11% had experienced someone disclosing that they were LGBT without their knowledge or agreement
- 9% had been subject to verbal harassment, insults or other hurtful comments
- Focusing on the most serious incident, 57% of respondents said it was perpetrated by a colleague at the same or lower level and 21% said it was by a line manager, immediate manager or supervisor and most did not report it

During Pride Month, these statistics are well worth revisiting. They serve as a useful reminder that, whilst great steps have been taken, there is still a long way to go before we can say that inclusivity for the LGBT community in the workplace has been achieved.

Despite protections against discrimination, which includes unlawful harassment, extending to the so-called 'protected characteristic' of sexual orientation, individuals continue to experience negative behaviour and take no action for all manner of reasons.

Employers need to be more proactive in monitoring behaviour in the workplace and dealing with bad behaviour identified or suspected, whether a complaint is made or not. This, in turn, will encourage those who are the targets of bad behaviour or witnesses to it to speak up, safe in the knowledge that the complaint will be acted on and appropriate steps are taken.

Birkett Long's team of employment lawyers advise employees if they have been subject to bad behaviour on their legal rights, which could include claims, for example, for discrimination and/or unfair dismissal.

If you would like to find out more about how we might be able to help, please contact me.

Julie Temple
01206 217318
julie.temple@birkettlong.co.uk

BIRKETT LONG LLP

PHOENIX HOUSE
CHRISTOPHER MARTIN ROAD
BASILDON SS14 3EZ
T 01268 244144

1 AMPHORA PLACE
SHEEPEN ROAD
COLCHESTER CO3 3WG
T 01206 217300

FAVIELL HOUSE
1 COVAL WELLS
CHELMSFORD CM1 1WZ
T 01245 453800

E NEWS@BIRKETTLONG.CO.UK
WWW WWW.BIRKETTLONG.CO.UK
TWITTER: @BIRKETTLONG

Birkett Long LLP is authorised and regulated by the Solicitors Regulation Authority (Number: 488404)

Whilst every care and attention has been taken to ensure the accuracy of this publication, the information is intended for general guidance only. Reference should be made to the appropriate adviser on any specific matters.

© Birkett Long LLP 2019 We hope you find this newsletter of interest, but if you would prefer not to receive it or wish to receive a copy via email, please contact the Business Development and Marketing Team on 01206 217336.

Reference: NEWS/FORLIFE/LGBT2019