



# For Life

PLANNING AHEAD

The future can seem a long way off; the reality, of course, is that it's not!

That's why planning ahead and making the right decisions today will give you and your family peace of mind. At Birkett Long our multi-disciplinary teams provide practical advice to guide you and your family through the maze of rules, procedures and finances.



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## An aging population

Financial abuse of the elderly is a heinous crime. Amanda Smallcombe looks at ways in which we can all protect ourselves for the future.

## Letters of wishes

As an addition to your will, letters of wishes can help your family understand your intentions. Jennifer Ward examines their use.

## Fraud alert

What needs to be done to protect you, our client, in your property transaction.

## Over 65s start afresh

Divorce and re-marriage among over 65s is on the increase. Francesca Cozens looks at the implications.

# An aging population

and the need to plan for the future


Birkett Long's charity of the year, the Alzheimer's Society, estimates that the numbers of people living with dementia globally will increase from 46.8m in 2015 to 131.5m in 2050; a 281% increase. Although not a palatable thought, we should all consider planning for that 'worst case' scenario.

It is a fact that we are an ageing population. There is a growing number of vulnerable people within our society and we are seeing a steady increase in those who are mentally unable to manage their financial affairs. In light of the statistics from the Alzheimer's Society, it is more important than ever to make provision for the future.

Dementia is only one of the many reasons that someone might lose capacity and sadly, such incapacity can affect people at any age.

Our advice is always to make a lasting power of attorney (LPA) so that you retain the choice of who will look after your affairs should you not be able to do so yourself, but a recent warning came from Denzil Lush, a retired senior judge of the Court of Protection. He said that people should be more aware of the risks of appointing an attorney and, as he saw it, the lack of safeguards in place.

Financial abuse can take many forms. From the more obvious abuse where large sums of money are taken from someone's bank account, to the surreptitious use of persuasion or overuse of a person's bank card. Mr Lush warned that in the cases he has dealt with 'almost 90% of abusers were family members', with 68% being a child of the donor.



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Because LPAs are not monitored regularly, Mr Lush prefers the option where a deputy is appointed by the Court of Protection. This happens when someone has lost capacity but does not have a LPA. Deputies have to provide annual accounts to the court and have a security bond in place so if financial abuse takes place, the sums lost can be recovered.

Not everyone shares Mr Lush's views. There are certainly drawbacks to waiting until a deputyship application needs to be made.

Letters of wishes can help clarify particular wishes that cannot necessarily be defined in your will; Jennifer Ward explains more about their purpose.

## A letter of wishes

what is it and when is it appropriate?

The late fantasy author, Terry Pratchett, passed away in 2015, following a battle with Alzheimer's, leaving a letter of wishes alongside his will. His letter of wishes included a request for any unfinished work (thought to be in the region of ten unpublished novels) to be destroyed by a steamroller. His wish finally came to life in August of this year when his work was crushed by a vintage steamroller at the Great Dorset Steam Fair.

Letters of wishes, whilst non-binding, sit alongside your will to help clarify to executors, beneficiaries and loved ones any particular wishes you have upon your death, which cannot necessarily be defined in your will. Letters of wishes can be used to deal with a variety of circumstances, for example; your funeral arrangements, explaining to guardians of your children how you would like them to be raised, or providing information on how you would like trusts to be run.

Application to become a deputy can be made by anyone with a sufficient interest, so unless you elect an attorney before you lose capacity, you will not have a choice over who steps in. Applying to be a deputy is more costly than creating a LPA as there are application fees, GP certification fees and annual fees. It can take several months before the deputy is able to assume responsibility - time during which your loved ones would quite possibly have difficulty in managing your financial affairs.

In order to protect against potential future abuse, it is essential to choose



your attorney wisely. Restrictions can be put in place when you create your LPA to help reduce the possibility of abuse. Appointing more than one attorney can also provide a check and balance. If someone is suspected to be a victim of financial abuse or it seems that their financial affairs are not being properly managed by an attorney, there are steps that can be taken to remove that person as an attorney, or require them to be monitored by the Court of Protection. On balance, we firmly believe that a LPA gives you control over what might happen in the future. Our specialist lawyers will advise you on all aspects of dealing with your own or a loved one's affairs including LPAs, deputyship applications and other applications to the Court.

For a free 15-minute phone consultation, contact Amanda Smallcombe on 01206 217395 or [amanda.smallcombe@birkettlong.co.uk](mailto:amanda.smallcombe@birkettlong.co.uk).

Letters of wishes can be invaluable in rationalising the division of your estate. For example, you may wish to explain that you have provided for one of your children to receive a larger share of your estate than the others as they are less financially secure. As well as helping to prevent misunderstanding or animosity, such explanation could avoid potential challenges to your will.

Terry Pratchett's particular wish has been made public but ordinarily (unlike a will that, upon application for probate, becomes a publically registered document) a letter of wishes is a private document that is generally only seen by those to whom you have given permission.

As solicitors, we hear many excuses why people delay writing their will, but the appropriate use of a letter of wishes is one way of alleviating some people's concerns that a strict legal document, such as a will, is going to cause upset amongst your family or fail to explain fully any non-standard requests you might have. After all, we want to make sure that it is your wishes that count.

Jennifer Ward is a trainee solicitor in our wills, trusts and probate department. She will be happy to offer you a free 15-minute chat over the phone on 01206 217380.

## Fraud alert

### a Law Society warning

A new joint property and title fraud advice note from the Law Society and HM Land Registry highlights the increasing risk of fraud in property transactions. The note, published on 8 September 2017, is intended to improve awareness amongst solicitors of the indicators of fraud with particular examples from cases recently heard in the courts.

The note details the methods used by fraudsters to carry out title fraud and identity theft, including the considerable lengths that fraudsters go to in order to mislead a buyer into sending purchase monies to them. For example, in the cases of the Nationwide Building Society v Davisons (2012) and Lloyds Bank v Markandan & Uddin (2012), those perpetrating the fraud registered both a fake sub-office with the Solicitors Regulation Authority and created fake websites.

This highlights the due diligence that solicitors need to be carrying out to ensure that the identity of the parties is properly verified and that the transaction is legitimate.

The important point to take away is that solicitors follow up on anything suspicious or out of place by properly recording and reporting problems. Even if a solicitor has followed usual professional practice, a court may decide that the steps taken exposed someone to a foreseeable and avoidable risk, and amounted to a breach of duty of care.

At Birkett Long we are committed to the highest levels of professionalism. We will do everything we can to ensure that transactions are legitimate and check all details very thoroughly. We know that sometimes clients can find it frustrating when we make requests for further information or ask seemingly straightforward questions, but in an environment where fraud is becoming increasingly sophisticated, such steps are necessary to ensure that our clients and their property are properly protected.



# Divorce and re-marriage for over 65s

New figures from the Office of National Statistics show that the over 65s are far more willing than they have been in the past to divorce and re-marry. Francesca Cozens looks at the implications.

According to recent data from the Office of National Statistics, the number of brides and grooms aged 65 and over went up by 46% in 10 years! The overall divorce rate has been decreasing over this time but the over 65s buck this trend with an increase in the incidence of divorce among that age group. The statistics are not linked – there is no suggestion that by marrying later the chances of divorce are increased – but why the change?

The ONS concludes that the increase in older people ending relationships and forming new ones is because life expectancy has increased. People also remain in work longer, making them more economically independent, and many have the attitude, ‘life is short.’

These changes have resulted in an increase in prenuptial agreements being drafted. When couples marry later in life, there are generally more assets brought to the marriage and couples have more to lose if it fails. In turn, this can impact on the inheritance of grown up children from a previous relationship. Prenuptial agreements enable couples to protect family wealth and enter a marriage with greater certainty.

People often ask if prenuptial agreements are legally binding in England and Wales. The answer is that the court has to take their contents into account in a divorce settlement. They will look at how well the agreement has been drafted and will want to see that both parties have had the

benefit of independent legal advice, have both entered into the agreement freely (there is a cooling off period), that financial disclosure has taken place and that fundamentally the agreement is fair in the circumstances. If these criteria can be satisfied then yes, the prenuptial agreement is likely to be upheld by the court.

## In summary:

A prenuptial agreement drafted by an expert provides the best possible protection against future claims from an ex spouse. Without it, the risks are high.

If you would like to protect the wealth you are bringing into a marriage, or if you have plans to live with your partner and want to be clear from the outset what will happen in the event of your separation, please contact Francesca Cozens for a free 15-minute telephone consultation, without any obligation.

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