



For Life

NEWS AND ADVICE FROM BIRKETT LONG

Pre-nuptial agreements

Not so romantic but an effective way of protecting family wealth

Considering a second marriage?

Then consider your will and make sure you get the right advice

Protecting your investment

An agreement to clarify your stake in a property when buying with someone else

Which will?

Choose which one is right for you



Marriage and the protection of family wealth

Planning a wedding is a time filled with joy and excitement. However, it can also bring some uncertainty and apprehension for some (not limited to the couple). This apprehension can often surround finances.

A large proportion of weddings in England are those choosing to marry for the second or third time. Pre-nuptial agreements used to be regarded as limited to the rich and famous. Times have changed and people now recognise them to be an effective method of protecting family wealth.

Pre-nuptial agreements are being increasingly used, effectively, to protect the inheritance of children from first marriages. If a second marriage were to fail, such inheritance would be at risk if a divorce were to take place because the starting point would be a 50:50 split of all assets.

The more traditional use is to ring-fence assets acquired before a marriage. This could be in the form of inheritance or personally acquired wealth, often when there is a significant difference in income or capital positions of the couple.

In the past, people have referred to such documents as 'unromantic.' There has been a significant move



“That’s not what they would have wanted” is the most common phrase we hear from disappointed family members who discover that they are going to inherit less than they thought, or nothing at all, from the estate of a loved one.

Wills and second marriages

Typically, such statements are made by children of a first marriage; stepchildren who discover that their stepparent has changed their will leaving everything to their own children and cutting them out.

As Tim describes in his article overleaf, it is usual for spouses, whether it be a first or second marriage, to make wills leaving everything to each other. This neatly divides the combined estate to

away from such terms of reference with people acknowledging the benefits to communication of such documents. The documents require the couple to be open and honest with one another. They look to provide clarity and certainty. This can only be achieved with an open dialogue. Some report that communication has been improved by having discussions about money before marriage. This reduces the chances of acrimony later, should the marriage not be successful, as they allow the couple to think 'outside the box' and have the freedom to agree terms that work for their particular circumstances.

The purpose of the agreement is to provide certainty and clarity for the couple. Although they are not legally binding at the moment, it is expected that the law will change. In the interim, the court must take such documents into account on divorce. If properly drafted, the court can, and is, persuaded to follow them in the event of divorce if certain criteria have been

met. For example, both have received independent legal advice and the document has been signed at least 28 days before the wedding, a 'cooling off period.' It is therefore essential to obtain advice at an early stage.

If a couple is not getting married but moving in together then they may wish to receive advice on a cohabitation agreement. The principle is similar to a pre-nuptial agreement. It lays out expectations and provides more certainty around what should happen from a financial perspective in the event of the relationship breaking down. Often these are prepared in conjunction with a Declaration of Trust.

If you would like to discuss your options on how to protect your family wealth, please contact me.

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all their children when the second of the couple dies. However, it is important to remember that, unless they have made mutual wills, the surviving spouse can change their will at any time. Whilst it is possible for people to remain close following a bereavement, time moves on and in some cases the step relationships become more distant. This results in the surviving spouse no longer feeling duty bound to benefit their stepchildren on their death. Whilst this appears sensible given that there is no rule of forced heirship in England, it can be unfair as it essentially means that the surviving spouse's beneficiaries will also inherit the deceased's estate, which is not what they would have wanted.

In order to benefit from their deceased parents' estate, it will be necessary for the children to make a claim under the

Inheritance (Provision for Family and Dependents) Act 1975. The Act allows certain classes of people, including children, to bring a claim against the estate to alter the value of their benefit under the will, on the basis that they have not left adequate financial provision. When deciding such claims, the court will look to award what is reasonable provision for maintenance, considering a number of factors such as the deceased's moral obligations and the size of the estate. However, such claims are time consuming and involve engaging in litigation, which can cost thousands of pounds. There is then a risk that the estate could be substantially depleted through funding legal fees.

It is important to take specialist legal advice on making your will, especially where there is a second marriage, to

Protecting your investment

Buying a house, or helping a loved one do so, is likely to be the biggest purchase you will make during your lifetime. Often, if you are buying with a partner or spouse, one party may have more available cash to put towards the deposit or purchase price. The difference in contribution can add up to a substantial amount of money, especially with increases in property prices.

So how can you protect your investment?

A Declaration of Trust is a legal document that confirms the actual beneficial ownership in a property and sets out the financial arrangements that the parties have agreed. For example, it could be agreed that you are entitled to receive 20% of the value of your grandchild's property when it is sold as you provided them with the deposit. In such a scenario, without a Declaration of Trust, you would be left with the burden of establishing your interest in the property.

Whilst formally declaring that you are entitled to more of the beneficial interest of your house, or are indeed beneficially entitled to a share in a loved one's property, appears unromantic, we recommend that it is considered in order to prevent issues arising in the future.

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ensure that your assets are protected and that your chosen beneficiaries inherit from your estate.

If you need advice on making a will or disputing a will, we have specialist will and inheritance dispute lawyers on hand to help you.



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Which will is best for you?

The simplest type of will is known as a mirror will. These are typically made by married couples and involve leaving the entire estate to the other when the first person passes away, and children, or other beneficiaries, when the second of the couple dies.



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Alternatively, you could make a discretionary trust will. This type of will involves putting all or some of your assets into a trust which are ring-fenced and managed by trustees. The trustees have absolute discretion to decide who gets what and when.

The final type of will, which is usually made when entering into a second marriage, is a life interest trust will. These wills typically involve leaving your respective half share of your home, and any other assets, into a trust for the benefit of your spouse during their lifetime. After your spouse dies, the assets pass to your chosen beneficiaries. This type of will also ring-fences assets and helps provide certainty that your

chosen beneficiaries will ultimately inherit your estate. These types of wills can assist in protecting assets when it comes to paying for care.

There is no “one size fits all” for wills and what is best for you depends on your own circumstances. This is why it is important that you take specialist legal advice to find out the best way to provide for your loved ones.

If you are unsure what will best suits your needs, a member of our specialist team can help you.

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