For Life

RELATIONSHIPS, SECOND TIME AROUND

Balancing and protecting

Recent figures from the Office for National Statistics show that there are more than 0.75 million step-families in the UK.

Re-partnered spouses often face challenges as they seek to balance competing interests; financially supporting their partner after their death but also passing some of their estate to their biological children.

Currently, if you die without making a valid will and you are not in a civil partnership or legally married, your new partner will have no automatic right to inherit and your entire estate will pass to your children. If you have married or entered into a civil partnership, your children will only receive a share if the estate is valued at over £250,000, as everything less than this will pass to your spouse or civil partner. Clearly, both of these situations could cause family conflict and neither outcome is fully reassuring that both your children and your new partner will be provided for after your death.

One way to avoid the above scenarios is to create a life interest trust in your will. This type of trust successfully provides financial support for your new partner whilst they are alive, but upon their death provides for your children from your first relationship.

The trust is created on the death of the first partner and their assets are held in a trust which pays any income generated to the surviving partner for a specified period. As the capital in trust is not legally owned by the survivor, it cannot be given away by them to their family or a new partner, protecting it fully for your children or any other of your chosen beneficiaries.

If you wish to discuss any information contained in this article, or to arrange an appointment to discuss inheritance planning, please contact Frances Whittaker on 01206 217366.

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Thinking ahead - the reality of separation

Part of each working day in the family team is spent resolving financial disputes between separating couples, whether married, in a civil partnership or cohabiting.

Regrettably, all too often we have to explain to clients that a simple document, drawn up either at the time they purchased the property they are now arguing over or when they began living together, would have avoided the legal fees they are now incurring.

A pre-nuptial (or pre-martial) agreement is an agreement made by a couple before they marry or enter into a civil partnership, which sets out how they wish their assets to be divided should their relationship come to an end. Those who don't wish to marry can enter into a cohabitation agreement.

Traditionally, pre-nuptial agreements were unenforceable as being against public policy. More recently though, the courts have been prepared to attach weight to these agreements as one of the relevant circumstances to be taken into account in exercising their discretion when deciding on the distribution of assets.

In a landmark ruling in 2010 the Supreme Court said that courts should give effect to pre-nuptial agreements that are freely entered into by each party with a full appreciation of the implications. This ruling does not make pre-nuptial agreements binding in every case, with the fairness of upholding any particular agreement being considered by the court on a case by case basis. In effect, therefore, pre-nuptial agreements will be binding in the absence of circumstances that would make this unfair, such as one party not having the benefit of legal advice before signing the agreement.

In February 2014 the Law Commission published its final report: 'Matrimonial Property, Needs and Agreements'. Among other things, the report recommended the introduction of "qualifying nuptial agreements" as enforceable contracts, which would enable couples to make binding agreements for the financial consequences of divorce or dissolution. Such agreements would have to meet certain requirements and couples would not, for example, be able to contract out of meeting the financial needs of each other and any children.

Cohabitation agreements for those who choose not to marry are likewise of benefit in determining what will happen to assets acquired both before and during the relationship, should the relationship end.

I still regularly speak with clients who believe that, by virtue of having lived with

Bare essentials

Joint ownership of property

When two or more people buy a property together it is important that they understand the types of joint ownership. The way in which joint property is owned may have implications for couples who separate, friends and family members who pool resources to buy property together, and even married couples wanting to minimise inheritance tax liability.

Joint Tenants
Should one person die, their share passes automatically to the other co-owner(s), not to those named in the deceased person's will. Owners have equal shares, which do not necessarily represent the contribution they have made to the property purchase. An example of an appropriate joint tenancy is a husband and wife in a first marriage who make a broadly equal contribution towards the purchase of a property that is not required for inheritance tax planning.

Tenants in Common
Co-owners can own the property in equal or unequal shares and should they die, their share will go to their next of kin or to those named in their will. It can fairly represent contributions from each person towards the purchase of the property, as co-owners can hold unequal shares and there is flexibility regarding who owns what. A possible disadvantage is that should a co-owner die, a sole surviving co-owner may be unable to sell the property.

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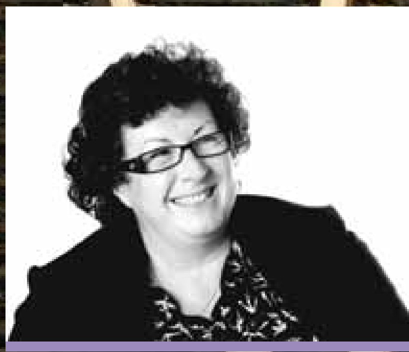
their partner for a number of years, they are 'common law husband and wife' and as such have equal rights to couples who are married or in a civil partnership. It is with disappointment they hear that is not the case and, in the absence of a cohabitation agreement, they can often find themselves financially vulnerable.

Although not romantic, it is advisable to enter into a pre-nuptial or a cohabitation agreement so that there is clarity between couples at the start of their relationship and later conflict is avoided. As well as the financial advantages of such agreements, The Law Society has recently reminded couples that one in four divorces involves a dispute over pets and it advises couples to draw up a pre-nuptial agreement specifying arrangements for their pets, who of course are a part of the family. The Blue Cross animal charity has said that they often have to deal with situations where pets are brought to them for rehoming after relationship breakdown simply because the couple cannot agree over the pet's future care.

The Law Commission's report includes a draft bill and a response to this had been expected this month. The Government has, however, postponed a final response on nuptial agreements until the next Parliament, so watch this space!



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Meet the team

Bronda Lohan

Being a lawyer is about more than just knowing the law.

As well as enjoying time with her West Highland Terriers, Bronda is a Fellow of the Chartered Institute of Legal Executives (FCILEx), a qualification she gained in 1992. Since that time she has specialised in family law, gaining wide experience in this area.

Having practiced at E. Edwards Son & Noice in Billericay for some twenty years, Bronda was delighted to join Birkett Long in 2013 following the merger of the two firms.

Bronda is also a member of Resolution - an organisation promoting constructive resolution of family disputes - and whilst embracing its ethos for progressing a case in a non-confrontational and sensitive way, she is known for adopting a robust approach when necessary to get the best possible result for her client.

“Thank you for your help and support. Your guidance helped me through a very difficult part of my life.”

A client recommendation.

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BirkettLong

Independent Financial Advisers

under the spotlight

Protecting your family

As a parent, you want to provide the best for your children and plan for their future.

We all know that raising children is expensive. In 2011 the average cost of raising a child was £133,848 and in 2013 this had increased by 15% to £154,414. This means the average cost of raising a child up to the age of 18 is £165 per week.*

How would you put a value on a parent? The reply would probably be – no amount is big enough. When considering levels of cover for life assurance policies, often the main basis for calculation is income. However, in addition, parents carry out unpaid domestic work which is not taken into account, for example spending time with their children, cooking and preparing meals, washing/ironing, cleaning, driving to activities and numerous other household tasks. The charts below show the results of research into the real value of a parent.

	MUM	DAD	NEW/ EXPECTANT MUMS
Hours/week	71 hours	53.5 hours	72.5 hours
Cost/year	£31,627	£23,971	£32,655
Perceived value of the parent:			
	PERCEIVED	ACTUAL	DIFFERENCE
Mum	£15,548	£31,627	£16,079
Dad	£15,496	£23,971	£8,475

Source: Legal & General "Value of a Parent" 2013 research

Parents significantly underestimate or overlook the cost of unpaid work. Most families think that protection for the parent earning the most money is the main priority. As the figures above show, it is important to consider both parents' contributions. Although 73% of parents say their top financial priority is to ensure that their children are looked after if they are unable to do so themselves - due to death or illness - over half of those households surveyed (51%) are living without life assurance.** Sadly it is a grim reality that 1 in 20 children lose a parent before they finish full time education.***

You can provide security for your family by taking out life assurance cover. Families affected by the tragedy of death or illness have enough worries without financial concerns. Often cost is given as a reason not to take out life assurance, but a joint level term life assurance policy for a sum assured of £150,000, payable on first death, could cost as little as £18.10 per month.**** Such a policy could be used to protect the family while they are growing up.

We often consider a family income benefit (FIB) policy with our clients; this type of policy could provide a monthly income in the event of a parent dying or becoming seriously ill. This is sometimes preferable to a lump sum payment and, in some circumstances, can be more affordable.

Maintenance payments protection

FIB can also be used for maintenance payment protection. Have you considered how you would manage if maintenance payments for your children ceased? If the parent making the maintenance payment suddenly died or became serously ill, payments that the family rely upon could stop. The FIB policy is often the most effective way of providing cover for child maintenance payment protection and can also be used to cover spousal maintenance payment protection.

Our team of independent financial advisers can assess your life asssurance requirements. As part of the process we recommend that you write a will, if you haven't already done so. Less than 31% of parents have a will and for new or expectant mums this falls to just 16%. Of the parents who don't have a will, 52% said the reason was simply that they hadn't got around to it.

**Source Legal & General "Value of a Parent" 2013 research.*
***Source Legal & General "Nearest to Dearest" 2014 research.*
**** Telegraph March 2015.*
*****Zurich Level Term Assurance quotation male and female, joint life, first death, non-smokers, term 25 years.*

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