

# The Life Planning Event



# Welcome!

- 2019 - £6.3 billion contributed by parents towards children's property purchases.
- Formed part of almost 260,000 property purchases – 19% of all property purchases.
- *“The bank of mum and dad continues to be the iceberg mortgage lender beneath the surface of the housing market. Parents, grandparents, family and friends set to lend thousands more to fund 1 in 5 house purchase.”*
- A panel with over 100 years experience between them!!
- Priti Mayor has been a solicitor since 1988 practicing solely in all aspects of matrimonial law. A member of resolution works tirelessly for the best results for her clients.
- Kevin Bourley has over 40 years of conveyancing experience and is highly regarded as one of the towns best residential conveyancers.
- Mark Goodson is an expert in all matters relating to elderly law including wills, probate, trusts and power of attorneys and has done so since early 90's. Previous partner in FWG he has been at BTMK since 2015.
- Lee Wilcockson has been a solicitor for over 22 years and has wide ranging experience of many areas of law. He is now head of the private matrimonial department and deals solely in private divorce, finances and children's matters.

# Residential Property and Conveyancing

## Head of Department

Matthew Clark & Chris Maddison (Directors)

## Heads of Teams

Matthew Clark, Chris Maddison, Kevin Bourley, Hazel Bourke, Gill Neill, Jane Webb, Philip Freeman, Ian Powell, William Todman, Simon Jones

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# Family Gifted Deposits

- It is becoming more common for parents to gift sufficient money to provide a deposit on a small house.
- In some cases, the gifted deposit maybe used for your child and their partner to purchase their first home.
- In this case, the house will be in joint names as this is the only way your child and their partner can raise a sufficient mortgage.
- If this was to be the case, they could have a declaration of trust, setting out how each own the property taking into account the money gifted to your child.



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# Joint Tenants/Tenants in Common

- When a property is owned by two or more people for their own benefit it is expressed to be owned by them either as joint tenants or tenants in common. These are legal terms which may best be described as follows:-
- **Joint Tenants**
- Where two persons hold land as joint tenants (whether or not they are married) on the death of one party the land passes automatically to the survivor irrespective of that person's Will or the intestacy laws. The intestacy laws are applicable where a person dies without having made a Will as a result of which an Act of Parliament deals with the distribution of the estate.
- If, therefore it is your intention that the property is bought jointly and that you wish the property to pass to your partner on your death, then the joint tenancy provisions will, of course, apply.
- **Tenants in Common**
- Where the property is held by co-owners as tenants in common each party will own a defined share in the property i.e. they will hold it in equal shares or one third/two-thirds as the case may be. By owning the property as tenants in common you are able to reflect the percentage to which you will be entitled in any future sale of the property reflecting the contribution made by each of you.
- If you decide to hold tenants in common and you are not married and you have not made a Will, then your half share in the property will not pass to your partner, but in accordance with the provisions laid down by statute, i.e. if your parents are still alive your estate would go to your parents, if your parents were not alive – to brothers and sisters, and so on.

# How To Protect Gifted Deposits Loaned To Your Child

- Advice parents need to know before gifting deposits.
- What happens if your child and partner break-up?
- In the unfortunate event that there is a death, how is your money protected?



# BTMK Solicitors Family and Matrimonial Department

## Heads of Department

Yvonne Hume & Lee Wilcockson

## Solicitors and fee earners

Yvonne Hume, , Priti Mayor, Charlotte Fedarb,  
Kylie Norris, Amy Tsikata

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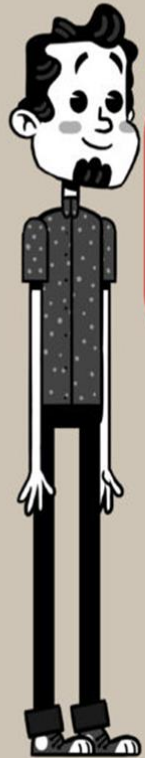
# Cohabitation/Common Law Partners

- What is the current law for those in cohabiting relationships?
- Do we need a cohabitation agreement?
- What do we include in a cohabitation agreement and how do I put it together?
- How can we help you with the cohabitation agreement?
- Is it legally binding?
- Is it cost effective?
- What else can be done to protect yourself in a cohabiting relationship?



# Myth-busting Common Law Marriage

If 'common-law marriage' rights are misunderstood, what really happens when an unmarried couple breaks up?



My partner owns our family home, but I paid for the renovation.

If your name isn't on the deeds, it's difficult to get this money back. A declaration of trust would help, it sets out what you both put in to the property, in terms of the purchase price and any additional capital contributions.

The relationship is based on trust and I'm worried about bringing this up.

You are in a vulnerable position if your name isn't on the title deeds and you should seek protection before putting money into the property.

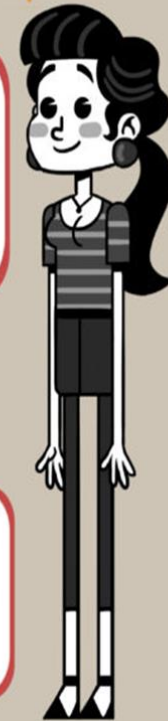


I gave up work to raise our kids, but I'll still have access to my partner's salary and savings.

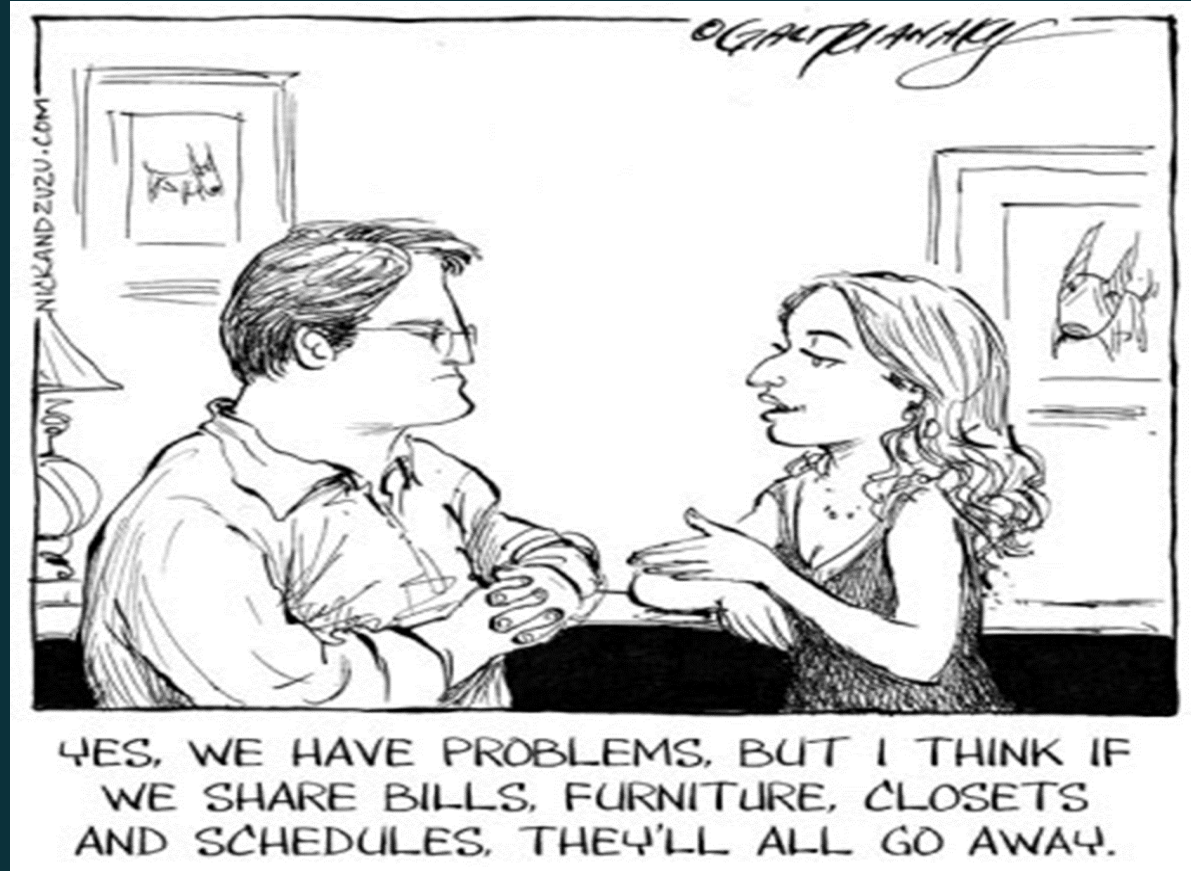
Your partner currently allows you to access these funds, but if the accounts are in your partner's name it's easy to cut you off. You cannot claim financial support in your own right like a divorcing spouse could, and you would need to apply to the court for payments for the children.

Neither of us has a will. If anything happened to one of us, would the other be covered?

Without being named on the title deeds for the property or in a will, if your partner died you'd have no automatic entitlement to a share of your partner's estate, including the home you're living in and any property not in your name.



# Don't Wait For Problems To Arise!



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# Which Brings Me Onto My Next Topic...

## Pre-Nups and Post Nups



# Pre-Nuptial Agreements

- Or pre-nups as they are more commonly known, are made by people before the marriage or civil partnership takes place.
  - A post nuptial agreement (or post-nup) does the same thing but it is entered into after the marriage or civil partnership has taken place.
- 
- So what can we include in a prenup?
  - Lets look at a few myths about prenups/post nups...
    1. They're only for the very wealthy.
    2. They are not legally binding in the UK.
    3. They undermine a relationship.

# You May Lose A Lot More If You Don't Consider A Prenup...

YES I WANT A  
DIVORCE!  
i just found out that a  
hit man will cost me  
five time more than a  
good divorce  
lawyer



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- Lastly, a quote that resonates with most people who have been through a difficult divorce:
  - *“if you do get married, get a prenup. It’s not about money at all. It’s about having a document that states how you’ll dissolve your marriage while you still have a shred of respect for each other.”*
- Alec Baldwin

# BTMK Solicitors – Wills, Inheritance, Probate & Trusts Department (“Private Client”)

## Heads of Department

Saul Caplan and Mark Goodson TEP

## Solicitors and Professional Staff

Simon Jones, Paula Dallison, Kavita Ryatt and Sophie Bacon,  
Megan McKinlay, Susan Foxen

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# Wills

- Only around 1 in 4 adults in the UK have Wills.
- Of those, an even smaller percentage have Wills that have been made or reviewed in the last 5 years.
- The Law of Intestacy applies when you die without a Will.
- Without a Will, your unmarried partner has no automatic entitlement to inherit from you whatsoever.
- Marriage revokes a Will.
- If you are getting divorced, your spouse is still your spouse until the Decree Absolute is issued.



# Trusts and Asset Protection

- Trusts are very good for shielding and protecting assets.
- A Trust is simply something that is held by one person or persons for the benefit of someone else.
- Trusts have a different taxation regime.
- Trusts can be very efficient in respect of Inheritance Tax planning.
- The use of Trusts within Wills are excellent to protect vulnerable beneficiaries, such as the disabled.
- The choice of Trustees can be very important.
- Most Trusts will have a maximum Trust period, but charitable Trusts can in perpetuity.

# Estate Planning

- Inheritance Tax can be mitigated considerably by undertaking some proper estate planning.
- There are certain assets, such as farms and some business, that are potentially free from Inheritance Tax.
- There are gift exemptions as well as asset exemptions.
- The 7 year rule is crucial.
- We are not IFAs, so will not sell policies, products or give financial advice.
- After someone dies, sometimes some retrospective planning can take place by using a Deed of Variation.

# Powers of Attorney

- A Power of Attorney (“POA”) is a document that appoints someone to look after your affairs when you can’t.
- An ordinary POA can be used only when the donor has their mental capacity.
- Lasting Powers of Attorney (LPA) can be used both when the donor has and lacks mental capacity.
- There are 2 types of LPA; Property & Financial decisions and Health and Care decisions.
- You can have LPA’s that deal with your business.
- If no LPA exists and you lose capacity, then the only option is a Court of Protection order.

# Court of Protection

- When someone loses capacity and no valid LPA is in place, then a Court of Protection order appointing a deputy is needed.
- These applications can be extremely expensive and time consuming.
- If no business LPA is in place, then the whole business is at risk.
- There will frequently be ongoing annual work as deputyship orders are supervised by the court.
- A deputy can be a family member, but it does not have to be; an NHS trust or council can also apply.
- Applications can be for finances and health, although orders made in respect of health are rare.

# Residential and Nursing Care

- We can advise on the procedure that should be followed before someone has to go into care.
- Frequently we are asked to check NHS continuing care assessments to make sure they have been done correctly.
- We can check and explain the care home contract.
- We can offer general advice to family members acting under an LPA or Deputy order.
- We can advise on how best to protect what assets you have against being taken into account in a means assessment.

# Probate and Administration of Estates

- When someone dies, if they have left a Will then generally a Grant of Probate is needed.
- If someone has no Will, then usually a Grant of Letters of Administration is needed.
- We are highly experienced in dealing with all aspects of estate administration and there is very little we haven't seen.
- We offer two services; a "Grant Only" or "Full Administration" service.
- A typical estate will take many months to conclude and no executor can be accused of being slow until a year has elapsed.

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# Contentious Probate and Trust Disputes

- Contentious probate is where someone wants to challenge the validity of a Will or make a claim against the estate.
- The validity of a Will can be challenged if (for example) it is felt that the testator was being unduly influenced, lacked mental capacity, had no understanding of what the Will meant, it was incorrectly witnessed, or fraudulent activity was evident (i.e. forgery).
- A claim can be brought for inadequate financial provision under the Inheritance (Provision for family and dependants) Act 1975.
- The beneficiaries of a Trust may need advice on whether their fund is being properly managed.
- Disputes between Executors or Trustees can occur, and we can provide independent legal advice.

# Case Study

- Harry and Meghan live together in a property rented in Harry's name.
- They soon decide to move to a larger property, rented in joint names.
- A few years later they decide to buy a house, but don't have enough money. Harry has £50,000 savings to invest in the property. Harry's father, Charles, gifts them £50,000 with the remaining £100,000 being obtained via a mortgage. They purchase a house as joint tenants.
- Meghan falls pregnant. Ever the romantic, Harry now finally proposes.
- The wedding of the year is held at the Roslin Hotel.
- Throughout the marriage, the couple obtain other assets including a rental property and have another child.
- 15 years later, marriage breaks down and unfortunately, divorce proceedings follow involving sale of the FMH.



# Don't let this be you!



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