ISSUE 7/2023

SHAKESPEARE MARTINEAU

LIFE TIMES

Co-parenting in the Birds Nest

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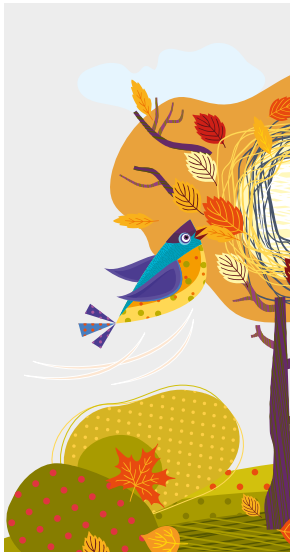
contents



2

The Importance of Making a Will

hello

Welcome to our next edition of Life Times – focusing on the unique and tailored legal solutions we offer to our private clients.

This edition takes a deeper look at the intricate needs and preferences of individuals and families, and some of the key issues affecting clients today exploring various aspects, from estate planning and wealth management to trusts, tax vehicles, remortgaging, bird nesting and more. Through thought-provoking articles, interviews with our own industry experts, case studies, and expert analysis, we aim to shed light on how private client law empowers and safeguards the interests of individuals and families, shaping a secure and prosperous future. Private client law is not just about rules, but about understanding the unique needs and aspirations of every client.

We'd love to hear from you if there is any subject you would like to see covered in future editions and as always we are here to guide you through these ever changing times and look forward to advising and working with you.

Victoria Tester
Managing Director
– Life and Business

The Importance of Making a Will, Changes to Statutory Legacy from 26 July 2023

As of 26 July 2023, the Government is increasing the 'statutory legacy' sum, underlining once again the importance of making a will. The changes highlight why creating a will has become even more critical for safeguarding your loved ones and ensuring your wishes are followed.

The impact of Statutory Legacy

If an individual passes away without a will, the new statutory legacy of £322,000, up from £270,000, will automatically be allocated to a spouse or civil partner, along with 50% of the remaining estate. The remaining 50% will go to any children and if no children, it will go to the surviving spouse. Importantly however, this benefit is not extended to cohabiting couples, highlighting the potential vulnerability of unmarried partners, who often think of themselves as common law partners, which has no legal status and who could therefore end up with nothing.

For those with an estate of less than £322,000, the surviving spouse or civil partner will inherit it all. For estates over the new threshold, problems could be encountered.

How could this affect families?

A split in inheritance could leave issues for those left behind. One big concern could involve a surviving spouse or civil partner having to sell a property to release sums due to their children, or including children on the deeds, which could potentially limit what the surviving partner can do with the property down the line.

Why is having a will so important?

Without a will, the distribution of an estate may be subject to arbitrary rules and lead to unintended consequences. The strict rules of intestacy may not account for step-children or other dependents or take into account specific provision or other wishes.

Family structures have changed enormously with people now part of blended families, involved in second marriages with stepchildren or cohabiting. These situations can face unique challenges when the rules of intestacy are applied. Disputes and claims from dependents seeking a share of an estate can become commonplace and can lead to further and unnecessary stress, friction and cost.

How can disputes be mitigated

Communication is key. Families should ideally have advance open discussions to avoid confusion and financial misunderstandings after their death. Clear communication can prevent disputes and ensure that dependents receive the support they were relying on.

Marriage or a civil partnership might not be right for everyone, but making a will is. It is an essential step towards protecting your loved ones and preserving your legacy. By preparing a will, you can make informed decisions, prevent disputes, and ensure your estate is distributed according to your wishes.

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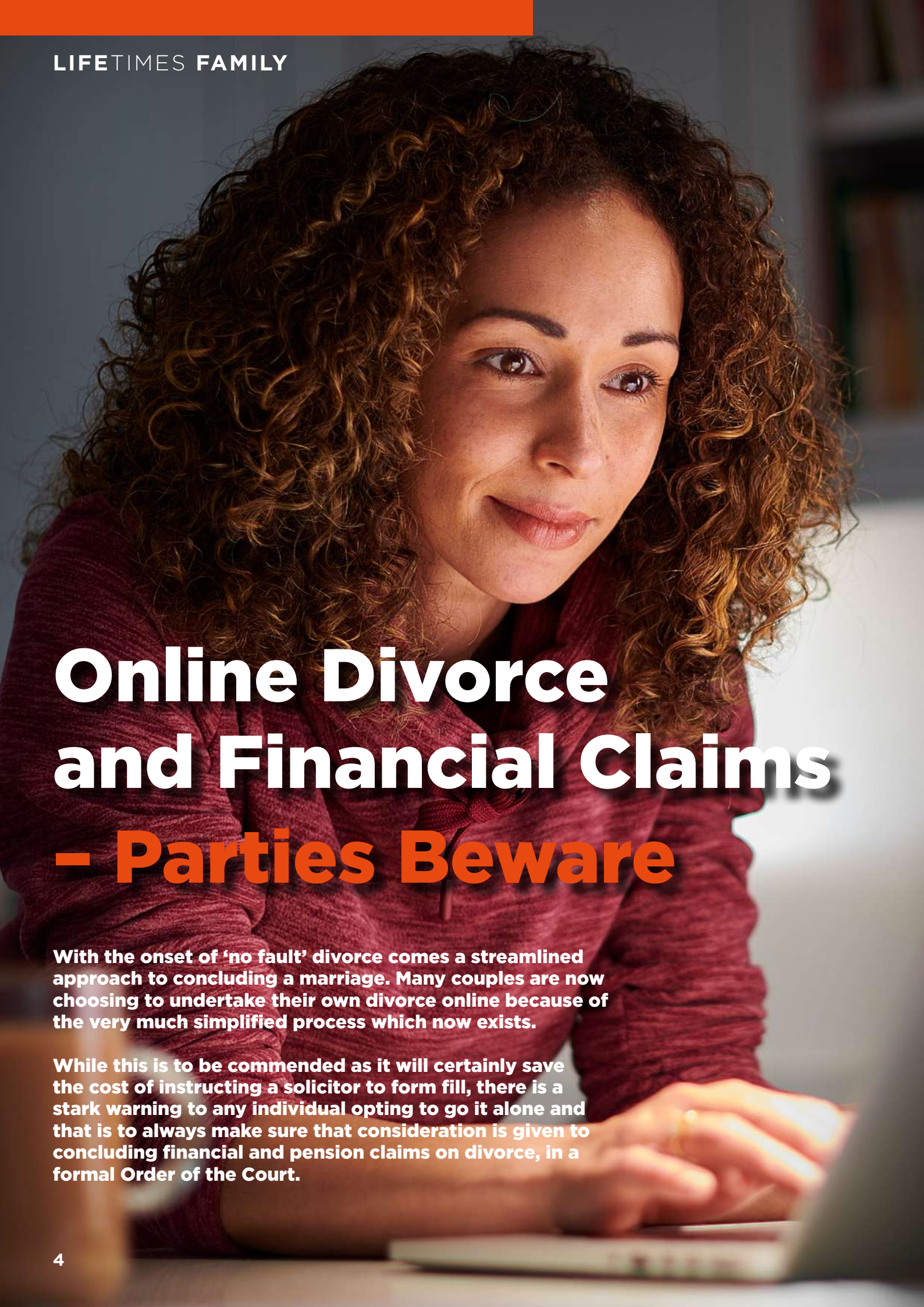

Online Divorce and Financial Claims – Parties Beware

With the onset of 'no fault' divorce comes a streamlined approach to concluding a marriage. Many couples are now choosing to undertake their own divorce online because of the very much simplified process which now exists.

While this is to be commended as it will certainly save the cost of instructing a solicitor to form fill, there is a stark warning to any individual opting to go it alone and that is to always make sure that consideration is given to concluding financial and pension claims on divorce, in a formal Order of the Court.

Financial Order and pension Sharing

Although it's possible to apply for your Final Order (formerly called Decree Absolute) to formally conclude the marriage, unless all of the financial claims have been finalised in an order of the court, they will remain alive and well and could reappear at any time up until a re-marriage, so it's really important to head them off once and for all.

Any agreement you and your ex-partner have reached about dividing up the assets, even if you have already put it into effect, should be backed up in a formal order, sealed by the court. Once that has been achieved, it's safe to apply for the Final Order to end the marriage.

Pensions can often be overlooked in divorce settlements even though they can be a major asset built up during the course of a marriage.

Not only is it essential to achieve a final financial order when embarking upon a divorce, but it is also essential to ensure that there is a sealed pension sharing order in place if pensions are indeed to be shared.

When to apply for the Final Order to end the marriage

Where a financial order includes a pension sharing order, the pension sharing order only comes into effect and becomes enforceable, on the later of the granting of the Final (divorce) Order ending the marriage, or 28 days from the date of the pension sharing order.

There is a major risk here. If you apply for the final divorce order before the 28 day period has elapsed, you may be divorced before the pension sharing order comes into effect and if the spouse that holds the pension dies before the 28 days have passed, the pension sharing order cannot be enforced by the surviving (now ex-spouse) and will fail.

It's important to therefore wait for the 28 day period to elapse before applying for the final order to conclude the marriage if there is a pension sharing order in place.

Applying for the Final (divorce) Order will mean that as the parties are no longer married, they are therefore no longer each other's next of kin for inheritance purposes.

So, in the event of a death and in the absence of a will, the surviving spouse will not automatically be entitled to the other's money and property and indeed will not receive any widow's/widower's pension benefits.

There are three options when it comes to pensions; pension sharing, pension attachment and pension offsetting.

Pensions – the options

Pension sharing

Often, an actuary is jointly instructed by the divorcing parties to establish what percentage of a pension needs to be shared. For example, if 35% of a pension is to be shared, that 35% is debited from the relevant pension scheme and given to the other party as a 'pension credit' so that spouse may invest it into their own pension plan and administer it completely independently from their ex-spouse's pension.

Pension attachment

A less popular choice, a pension attachment order enables a spouse to receive a share of the pension in payment, or a lump sum, or a combination of both, from their ex-spouse's pension fund – but only when the ex-spouse retires and not before. However, if the member spouse predeceases their ex or the receiving spouse remarries, the benefit of the pension attachment order is lost entirely.

Pension attachment orders may however, be appropriate where there is a large age gap between the parties as the younger spouse would be entitled to receive the benefits as soon as their older ex-spouse retires.

Pension offsetting

Where the parties have sufficient capital available, the value of the lost pension benefits can be offset against non-pension assets which allows one of the spouses to keep their pension intact and the other to have more capital instead.
This works well where one of the parties wishes to retain the family home and offset their ex-spouse's interest in their pension against their ex's share of the equity in the family home.

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What Should You Do Before Remortgaging?

For most people, getting a mortgage is the biggest financial responsibility they will take on and remortgaging can be a way to save money and reap the benefits of your investment. However, with anything, this comes with both pros and cons. Navigating the process and weighing up the risks can be complicated, but our team breaks down the most frequently asked questions to put your mind at ease so you can enter the remortgage process with confidence.

How does remortgaging a property work?

Remortgaging is when you move your mortgage on your existing property from one lender to another. However, you can also remortgage with the same lender by simply moving from one mortgage product with them, to another. The equity you have in your home will be used as security for the remortgage, in the same way that an initial deposit is used when you first purchase a property.

Why do people remortgage their house? What are the benefits?

You may be considering remortgaging for a number of reasons. You may be coming to the end of your existing fixed rate mortgage deal and don't want to move onto your current lender's variable rate, or you may want to use the end of the current deal as an opportunity to utilise the equity in your home and borrow more money against your property to withdraw cash. Whatever your motivation for remortgaging, we're here to guide you through the process.

What are the risks of remortgaging?

While you may be considering refinancing to secure a better rate, or to utilise some of your equity and withdraw cash, there are some risks associated with remortgaging.

If you're still within a fixed-fee period there are likely to be fees to ending your current mortgage early. These can be thousands of pounds, so it's worth weighing up if the benefits of remortgaging will be wiped out by the cost of these fees. Remortgaging by extending the length of your mortgage will also increase the overall cost of your loan, as you'll be paying more interest over the course of the loan. Finally, it's also important to remember that when you take out a mortgage on your home (whether an initial mortgage or by remortgaging), your home acts as the collateral against the loan, so if you find yourself unable to keep up with the repayments, the property can be repossessed.

How quickly can you remortgage a property?

The remortgage process typically takes between four and eight weeks, although the amount of time it takes will depend on each individual's personal circumstances.

How much equity do I need to remortgage?

Although most lenders will require you to have at least 5% equity in your home, so a loan-to-value (LTV) ratio of 95%, to stand the best chance of securing the best remortgage deal you should have at least 20% equity in your home (a 80% LTV ratio). You may still be able to remortgage with no equity in your home at all, but this is usually quite difficult and is likely to require someone to act as a guarantor.

How the remortgage conveyancing process works

Not everyone is aware of how the process of engaging remortgage conveyancing solicitors works, so we've provided an overview below to give you some peace of mind.

1. The first stage is to get in touch with us. You will then be assigned to one of our remortgage conveyancing specialists. Call us on 0330 024 0333.
2. You'll then receive a free 15-minute consultation within 24 hours via Zoom or telephone to discuss the issues you're facing.
3. You are then provided with a transparent breakdown of our costs and, if you would like to proceed, we send you a pack of onboarding documents.
4. Following this, we will guide and support you through the process of achieving a resolution that works for you and your family.

Checklist

What should you do before remortgaging?

- **Calculate how much equity you have in your home** – do some research to see how much your property could be worth to find your loan-to-value (LTV) ratio. You can do this by dividing the amount you still owe on your mortgage by the current value of your property (and then multiplying this by 100).
- **Check your credit rating** – access your credit report for free through one of the big credit agencies to view your history of credit cards, loans, overdrafts, mortgages, mobile phone contracts and even some utility payments over the past six years. Once you've checked your credit report, you'll be in a better position to see where (if any) improvements can be made before you apply for your remortgage.
- **Don't apply for credit just before you remortgage** – applying for credit within six months of remortgaging could increase your debt-to-income ratio. Lenders use this to determine your ability to repay any mortgage loans, so an increase in your ratio could make lenders wary that you may not be able to meet the repayments of the mortgage.
- **Check if you need to pay an early repayment fee** – most mortgages will have an early repayment charge if you remortgage before the end date. As this fee can be thousands of pounds it's definitely worth making sure you remortgage after this date (even if it's the next working day) if you're able to. If your current mortgage doesn't have a charge, for example you may be on a variable rate rather than a fixed fee product, then you're free to remortgage at any time.
- **Start the remortgage process early** – you can usually lock in a remortgage offer three to six months before your current mortgage deal ends. However, be cautious of any fees involved with securing this rate early (such as arrangement fees). It's important to weigh up the cost of any fees involved to secure the deal early, vs waiting to see what happens to interest rates. If you change your mind and switch to a better deal (after you've 'locked in' a rate, it's likely you'll lose any fees you've already paid, and may have to pay them again for the new deal as well.
- **Get your paperwork in order** – you'll need to provide the same amount of paperwork as you did when you initially applied for your mortgage. Therefore it's a good idea to get this all ready to hand to help speed up the process. This can include your last three months' bank statements and payslips (including proof of any overtime or commission), your latest P60, proof of ID and proof of address.

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SHAKESPEARE MARTINEAU

Meet the team

Getting to know

Ed Atkin

What is your role at SHMA and how long have you been here?

EA: My role at SHMA is a partner in the residential conveyancing department. My particular focus since joining earlier this year has been the Lincolnshire (I am based in our new Lincoln office) and London markets as well as working on Shakespeare Martineau's new national conveyancing strategy.

What do you find exciting about your area of expertise?

EA: I have been a property lawyer for almost 20 years and I take great job satisfaction in guiding clients through the sometime archaic and complicated conveyancing process. I still take great pleasure in being able to tell clients that their purchase or sale has completed, as we all know what a stressful and emotional time moving house can be, so to offer that guidance and reassurance is particularly satisfying.

What keeps you awake at night?

EA: Unfortunately, being a property lawyer, sleepless nights come with the territory. The thought of missing something important while working on a client's file will continue to cause the occasional bad night's sleep for the foreseeable future.

What are the biggest challenges for your clients right now?

EA: The biggest challenges facing my clients at the moment is the lack of affordable mortgage finance. The top of the market has remained resilient as it is less reliant on mortgage finance, but until interest rates drop or house prices drop to a more affordable level, transaction volumes will continue to be lower than previous years. Consequently the current financial year will be both a transitional and challenging period given the pressure facing the economy.

What would you like to achieve in 2023/24

EA: We have begun to implement our national strategy, part and parcel of which is to implement a new case management system, new team structures and more collaborative ways of working within the team and also with other departments. The current year will certainly be a year of transition and thereafter consolidation in what will likely be a difficult property market for some time to come. That being said, all current indicators are positive with year on year growth with transaction numbers and feedback from clients.

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Wills, Trusts, Tax and Estates Frequently Asked Questions

With the responsibility that comes alongside buying property or the implications that stem from inheriting a property or large sum of money, creating a will can be easily forgotten or pushed back. Our private client team addresses the most frequently asked questions and highlight the importance of making a will at the earliest opportunity.

Why is it important to make a will?

Making a will is key to ensuring that your wealth is distributed as you wish upon your death. If you die without making a will then intestacy rules apply, which will dictate how your money, property or possessions will be allocated (which may not be the way that you would have wished your assets to be distributed).

It's important for unmarried couples to make a will, as they cannot inherit from each other unless there is a will in place. Also, if children are involved, a will is important to ensure that arrangements can be made for them if either one, or both, parents die.

Is it legally binding without a solicitor?

Although you do not need to use a solicitor to help you draw up a will and make it legally binding, it is advisable to use a solicitor, or at least have a solicitor check a will you have drawn up, to make sure it will have the effect you intend it to have.

It's particularly advisable to use a solicitor if you own a property with someone you are not married to (or in a civil partnership with), or there are several family members who may make a claim on your estate following your death, such as children from a previous marriage.

How do I change my will?

Although you cannot amend a will after it's been signed and witnessed, you can make minor changes to a will by making an official alteration called a codicil. This must be signed and witnessed in the same way as a will.

However, if you wish to make any major changes (such as getting married, divorced or having children) then a new will should be made instead. This new will will revoke all previous wills and codicils, and you should destroy all original copies of the previous will.

What is an estate or probate solicitor?

The role of a probate solicitor (sometimes called an estate administration solicitor) is to support the executors in dealing with all of the procedural requirements involved in administering an estate, such as advising on any problems that arise, ensuring all applicable tax is paid and the estate accounts are completed correctly.

For example, making sure the right tax is paid, any problems are identified and resolved and all accounts are handled with full legal compliance.

Do you need a solicitor to settle an estate?

Although you don't need an estate or probate solicitor to deal with the estate administration or probate application, we do advise that you at least seek legal advice as the process can be hugely time consuming and complex.

As executors and administrators are legally responsible for administrating the estate correctly (including paying appropriate tax and filing paperwork and accounts), it is best to seek support from someone who understands the legal jargon and can guide you in the right direction.

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The Importance of the Pre-nup

For lots of couples the use of a pre-nuptial agreement (commonly referred to as a pre-nup) is there to protect assets and interests, should things go wrong in the marriage.

In the past, they have very much been thought of as the domain of the rich and famous but with blended families becoming more common, they too are becoming much more common.

If you want to protect your wealth ahead of your wedding and you're still contemplating whether you should have a pre-nuptial agreement, the recent case of **MN v AN [2023] EWCH 613 MN v AN [2023] EWHC 613 (Fam) (10 March 2023)** highlights the importance of having one in place.

The background to the case

The husband had assets of £32.5 million and the wife £62,000. Their pre-nuptial agreement in 2005 provided for the husband to pay the wife £500,000 for each year of marriage, capped at £12.5 million after 25 years and, after eight years or the birth of children if earlier, she was to receive 50% of the value of their London property.

In the alternative, she would receive a 50% share of any increase in the husband's assets during the marriage, if greater, but capped at 42% of the husband's total wealth. The husband was to pay all expenses relating to any children, which included maintenance of £60,000 per annum per child plus school fees.

At the time of the divorce in 2019, the husband relied upon the terms of the pre-nuptial agreement, which would provide the wife with a total of £11.75 million for her income and capital needs.

The wife argued that, as the pre-nup was executed five years before the definitive judgement in the case of **Radmacher – Garantino,** the pre-nup was invalid. She also argued that the husband had said there would be no marriage in the absence of the pre-nup that the agreement was vitiated. She sought £18.1 million of the total assets of £46.3 million and wished to remain in the family home with the children.

What was the outcome of the case?

The judge found that the parties had instructed excellent solicitors who took their roles seriously. The pre-nup could not simply be ignored save for terms to the wife's benefit, as she wished. The terms were reasonable and the element of 'sharing' had not been ignored as the wife would have received half the marital acquest had that been greater. The pre-nup would have been ripped up after 25 years. There had been a full disclosure and the wife had not been under any 'undue' pressure. She had been advised to treat the pre-nup as binding and no vitiating factors led to a reduction in its weight.

The wife was therefore held to the pre-nuptial agreement. Her spending would have to reduce from the very high marital level and she was able to downsize in terms of her housing.

This case follows the decision in the case of Radmacher, and the judge also made it clear that anyone entering into a pre-nup must accept that they will be held to its terms in the absence of something pretty fundamental which vitiates the agreement. These agreements are intended to give certainty and those who sign up to them can't then expect to be released simply because they don't now like what they agreed to at the time.

What is the pre-nup situation here in the UK?

The UK has been slow to recognise the importance and validity of pre-nups and it was the landmark case of Radmacher v Granatino that highlighted this.

Radmacher and Granatino had entered into a pre-nup prior to their marriage agreeing that neither party would benefit from the property of the other, on divorce.

When the couple did divorce, the pre-nup was overturned by the judge, who awarded the husband a much larger settlement than was recorded in the pre-nup because, in her view, its importance had been lessened as the husband had not received appropriate legal advice before signing it and there were now children to take into account.

The wife appealed this decision and won. The husband took the case to the Supreme Court but the decision was upheld and he was unsuccessful. The judge ruled that pre-nups have 'magnetic importance' and appropriate weight should be given to the agreement IF entered freely into by both parties and who fully appreciate the implications of the agreement and potential outcomes.

Can a pre-nup be overturned in the UK?

The keyword in the above case review is "IF" the agreement has been entered into freely and knowledgeably. If it can be proved that this is not the case, then there are grounds for the agreement to be overturned and it will not be considered binding if:

- Any subsequent children from the marriage are not provided for.
- The agreement was signed under pressure or there was undue influence or if one party did not have the legal capacity to enter into the pre-nup.
- It can be proven that one party did not fully understand what they were signing or what the implications to them would be if it was used.

What can be done to ensure a pre-nup is given maximum weight?

To limit the opportunities for the agreement to be reviewed or overturned it is advised that any pre-nuptial agreement be drawn up and entered into well in advance

of the actual wedding to allow time for review, discussion and negotiation if appropriate.

Financial disclosure is also a prerequisite. Either party found to be failing to disclose their financial situation will mean the agreement is unlikely to be given maximum weight. Also, evidence of the parties having a full understanding of the financial position of the other party will help an agreement remain watertight.

If all of the above can be proven then a pre-nup, while still not technically legally binding, will stand up to scrutiny by a UK court and should be given decisive weight.

Who should get a pre or post-nuptial agreement?

- If you are engaged to be married or about to enter into a civil partnership and wish to have certainty regarding your financial matters in the event of your marriage/relationship breaking down, then you should have a pre-nuptial agreement.

- If you are already married/ have entered a civil partnership and you would like to make arrangements to create certainty regarding your financial situation in the unfortunate event your marriage/relationship breaks down, you should have a post-nuptial agreement.

- If you have children from a previous marriage whom you wish to financially safeguard then, again, you should look to obtain a nuptial agreement.

- Finally, if you have significantly more wealth than your partner then, again, you may wish to enter into a nuptial agreement.

  It's always sensible to have a safety net in place which sets out clearly what should happen to your finances, in the event your relationship breaks down.

What happens during a divorce if the couple has a pre-nuptial agreement?

The court will consider whether to give effect to a pre-nuptial agreement if it is freely entered into by each party with a full appreciation of its implications.

The key question is fairness. To establish this, the court will query whether the agreement was entered into freely and if the parties were aware of the implications of the agreement. It must be fair to hold the parties to the agreement in the circumstances prevailing and this will include whether any children have been born.

What should someone do if they're asked to sign a pre-nuptial agreement?

Always take legal advice. Find out more about our services and how we can help by visiting our **pre & post-nup page**. It is key that each party seeks separate legal advice.

How we can help you with a pre-nup

While it can be a challenge to broach the subject of a pre-nuptial agreement, and some may see it as an unnecessary expense, this recent case has once again highlighted that it certainly is an investment worth making.

Wherever you are on your journey, our pre and post-nuptial agreement specialists are here to answer any questions you might have. We will guide you through the process of drawing up an agreement for your particular circumstances, ensuring the outcome is right for you, your family and your future.

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Meet the team

Getting to know

Julia Rosenbloom

What is your role at SHMA and how long have you been here?

JA: I am a tax partner and I joined the firm about five months ago.

What do you find exciting about your area of expertise?

JA: A career in tax is exciting and do not believe anyone who tries to tell you otherwise! My area of expertise is all about problem solving. Finding the right solution for someone is incredibly satisfying, often requiring "outside the box" thinking.

It is also incredibly varied. In the space of a single day, I could be advising one client on the sale of their business, another one on emigrating from the UK and a third on how they should structure their property investments tax efficiently.

It is also fast moving as an area of law as legislative changes happen at least once a year. In some respects, this makes tax law a very challenging area, but it does mean you are constantly rethinking your approach to certain scenarios and finding fresh solutions.

What keeps you awake at night?

JA: With such an exciting job, you're expecting me to say "my work" I am sure, and it does sometimes – for lots of reasons. I do try and switch off my mind though if I can so I can be refreshed for the next day. Reading a good book can help me do that, although if it's a really good book I can fall victim to the "just one more chapter" syndrome.

What are the biggest challenges for your clients right now?

JA: The answer to this varies from client to client but, across the board, the potential of a change of government next year is creating a lot of uncertainty. Typically, a Labour government will increase taxes so a lot of my work now is advising clients on how they might prepare for unfavourable changes.

I am advising some clients that, if they are looking to sell their businesses or properties in the short to medium term, they might consider accelerating those disposals to take advantage of the current tax regime or take other steps to "bank" the current tax rates. These clients have some big decisions to make over the next six months, but I am here to help them make those decisions.

What would you like to achieve in 2023/24

JA: I generally consider myself to be a realist so I will leave out things like running the London Marathon, giving up chocolate and convincing everyone that advising on tax is fun. Instead, I will opt for getting a little more fit, eating a slightly healthier diet and recruiting one or two people into the tax team.

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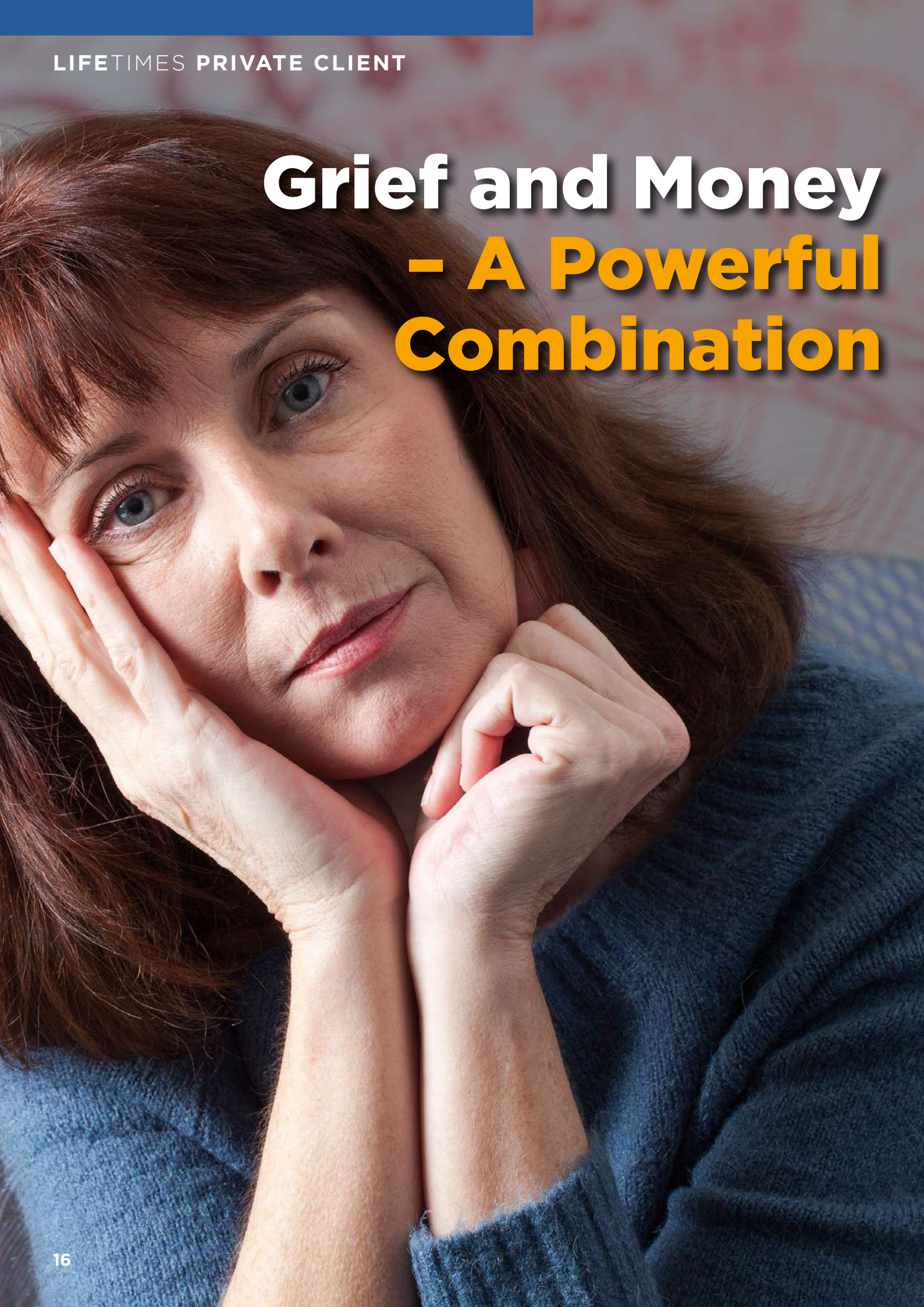
Grief and Money – A Powerful Combination



Grief and money are two powerful forces that, when combined, can create a perfect storm of stress and tension within families.

The recent discovery of competing handwritten wills months after the passing of the legendary singer, Aretha Franklin, has set the stage for a legal drama that could rival any silver screen spectacle. The absence of a clear and legally binding will has ignited family tensions and highlighted the importance of proactive estate planning. Aretha's case serves as a poignant reminder of the significance of planning ahead to ensure our wishes are accurately recorded and legally binding, sparing our loved ones from unnecessary heartache and financial burdens.

The Consequences of Dying Without a Will

If Aretha Franklin did, in fact, pass away without a will, her four children will inherit her estate equally, with no specific instructions regarding the division of assets. While this may seem like a fair and straightforward solution, it leaves room for ambiguity, disagreements, and potentially damaging family rifts. Without a clear plan in place, the distribution of assets becomes subject to personal interpretation and emotions, intensifying the stress that grieving families already face.

The Discovery of Handwritten Wills

Adding further complexity to the situation, handwritten wills purportedly drafted by Aretha Franklin have emerged. These documents dictate how specific assets should be divided among her heirs, introducing a new layer of contention. The existence of these wills could fuel family tensions, as each member seeks to protect their perceived interests.

The Importance of Planning

Aretha Franklin's case serves as a stark reminder of the necessity of planning ahead to safeguard our legacies and protect our loved ones. By creating a comprehensive and legally valid will, individuals can ensure their wishes are accurately recorded and adhered to after their passing. Estate planning not only clarifies the division of assets but also provides specific instructions regarding other important matters, such as guardianship of minor children, end-of-life decisions, and charitable bequests.

Preventing Heartache and Financial Burdens

One of the most significant benefits of thorough estate planning is sparing our loved ones from unnecessary heartache and financial burdens during an already challenging time. By clearly articulating our wishes and distributing assets in a well-documented manner, we alleviate the burden on our grieving family members, sparing them from contentious legal battles and the emotional strain that comes with them. Proper estate planning can minimise legal costs in the long run, as disputes over asset distribution and ambiguous intentions can be avoided.

How we can help

Navigating the complexities of estate planning can be daunting, but seeking professional guidance can provide invaluable support. Estate planning lawyers specialise in translating your wishes into a legally sound and binding document, ensuring that your intentions are accurately recorded and enforced. By involving professionals who understand the intricacies of estate law, you can gain peace of mind knowing that your loved ones will be protected and your legacy preserved.

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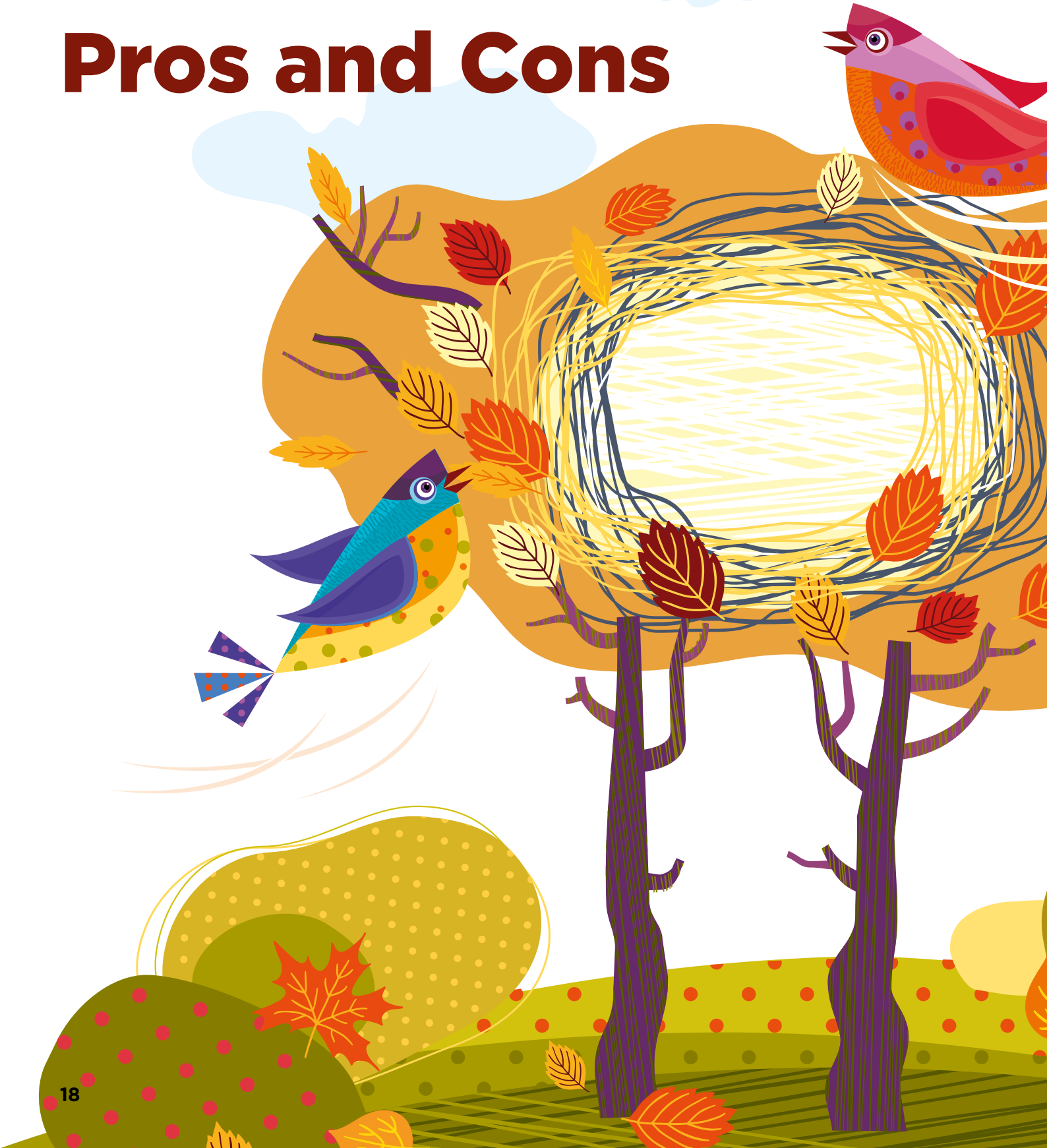
Co-parenting in the Birds Nest – the Pros and Cons



In family law circles, "bird nesting" is a phrase that is readily understood. However, outside of these circles, this is not the case.

What is 'nesting'?

There are several scenarios to consider:

The family home is often referred to as the "nest" – when children leave home, they "fly the nest". "Bird nesting," or "nesting" draws on this metaphor, by placing the family home at the centre of a family where the parents have made the decision to separate. The concept of "bird nesting" is that the nest is maintained, for the benefit of the children, who remain resident there, while the separated parents effectively take turns to care for the children in the "nest", coming and going as necessary. This results in the positive maintenance of a stable home environment for the children, as many children from separated families struggle to live in two homes – where the school kit they need on any particular day is invariably not in the house it needs to be.

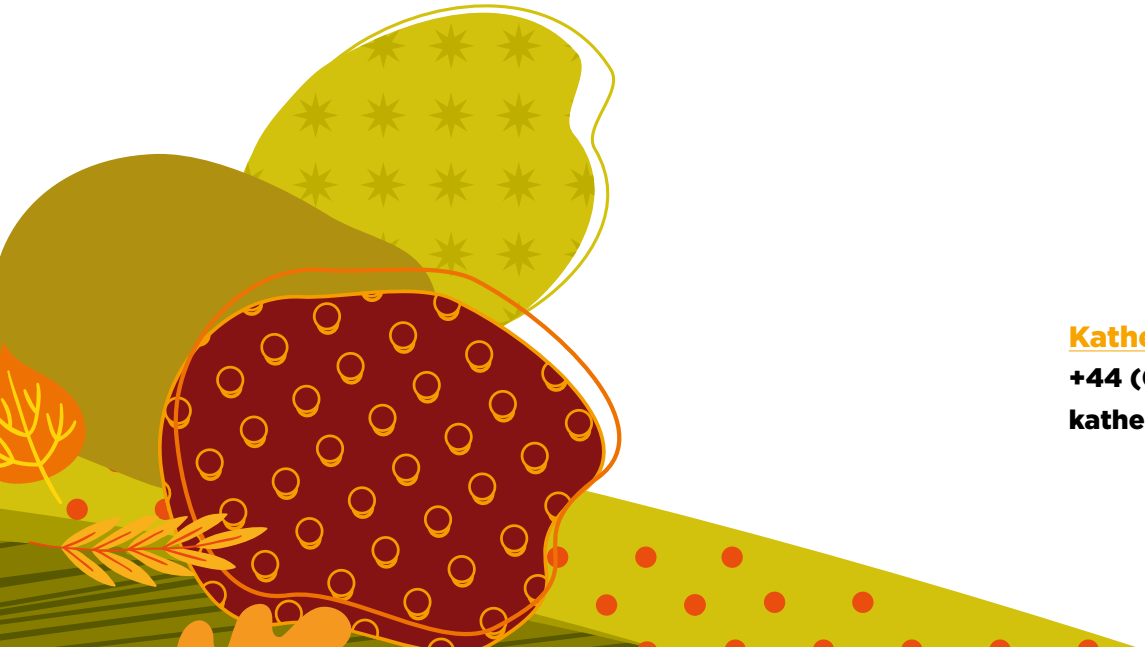
Often when children are told their parents are separating, the scariest part for them is the unknown of where they will live. The reassurance of being told they will remain in the home they know, will continue to sleep in the same bedroom they've perhaps always slept in, remain at the same school and take the same route, can significantly help children in dealing with the separation of their parents, minimising the changes they are exposed to.

Parents may arrange a separate, smaller flat or living space, which they move in and out of, as they take turns to reside in the "nest" with the children. Some arrangements see parents having their own individual spaces separate from the family home – perhaps with new partners. Effectively three roofs for one (separated) family. While that is a costlier option, it allows the adults to have their own separate living space.

Will nesting work for us?

What is clear, is the significant level of cooperation and communication required to make a nesting arrangement work. With questions arising around, how will household bills for the family home be met? What arrangements will there be for ensuring the smooth running of that household with food supplies, clean laundry, utilities, and so on? Who will be responsible for the cleaning? When will we get to live our separate financial lives?

Inevitably, it's not an arrangement that can work for all separated families. But for some, it could be the key to making separation less traumatic for their children. It's certainly worthy of some serious thought, given the benefits it presents for the future adults of tomorrow.



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Home Loan Scheme – You Might Consider Winding up the Structure Now

In what was once hailed as a solution to reduce inheritance tax (IHT) liabilities, historic home loan schemes are now becoming a potential "time bomb" for homeowners. Families are being encouraged to reconsider their involvement in these complex trust setups and potentially unwind them to save their loved ones from facing hefty double tax payments.

What were home loan schemes?

During the 1980s, 1990s, and early 2000s, families were encouraged to establish intricate trust structures, commonly known as home loan schemes. These involved individuals, typically parents, selling their property to one trust (the house trust) in exchange for an IOU. The benefit of this IOU was then gifted to a second trust (the debt trust). Consequently, the parents could reside in the house rent-free, and the value of the house trust was minimised due to the debt owed to the debt trust. The beneficiaries of the debt trust excluded the parents, transferring the value related to the IOU payment rights to the younger generations. In essence, the scheme aimed to remove the house's value from the parents' estates for IHT purposes while allowing them to continue living there rent-free.

The current position

Since 2005, the Government has introduced anti-avoidance measures to counter such schemes, including Pre-Owned Asset Tax (POAT). Rather than IHT, POAT functions as an income tax charge based on the market rental value of the property. This has led to some families facing substantial annual personal income tax bills in addition to IHT on their estates.

POAT charges have caught many families off guard, resulting in significant income tax burdens instead of the expected tax-saving benefits. The situation becomes even more challenging if the scheme is left in place, leading to more substantial long-term costs.

Although HMRC has taken legal action against individuals they assert have "mistakenly" claimed IHT relief while facing POAT charges, they are now proactively encouraging people to unwind their trust-based home loan schemes, offering a way to reclaim POAT charges if done correctly.

What should people that have a home loan scheme do now?

Families affected should seek advice to consider unravelling their schemes as soon as possible. This can be an intricate process and could lead to complications related to stamp duty, capital gains tax, and income tax so expert advice is crucial to navigate the unwinding process effectively.

These schemes were not the sole domain of the extremely wealthy, however, historically the middle classes were targeted and as the country is in the midst of a cost of living crisis it is critical that families look to safeguard their financial well-being.

What was once seen as a viable tax-saving strategy has turned into a potential financial burden for families with home loan schemes. Taking proactive steps to unwind these complex trusts can protect the family's wealth and alleviate future tax liabilities.

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