



# For Life

WEALTH MANAGEMENT



Protecting wealth is a topic often overlooked, yet without expert advice both wealth-holders and future generations are likely to lose out.

At Birkett Long we offer a service that combines financial and investment advice, retirement planning, and legal and estate planning, all under one roof. Our emphasis is on providing clear and objective advice that leads to solutions that help you make the most of the wealth you have accumulated.



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## The value in your business

When you've built up a business it is only natural that you want to preserve its value. Tracey Dickens outlines ways to achieve this.

## Preuptial agreements

Often thought of as unromantic, the prenuptial agreement is more and more in demand. Mel Loxley looks at the potential benefits.

## Investments and LPAs

Without a discretionary clause in your LPA, your attorneys may have trouble managing your investment portfolio.

## Passing on wealth

Nicola Ward explains how timely planning can help retain your hard-earned wealth so that future generations can benefit.

# The value in your business

and protecting that value for your family

Wealth in many families comes from family businesses. Tracey Dickens, a specialist in ownership and exit arrangements of a business, outlines how Birkett Long can help family business owners to protect the wealth they have worked so hard for, and, where desired, ensure it stays within the family.

- We assist family farming partnerships with their partnership agreements that ensure key assets remain within the partnership for future generations; we do this by restricting rights of the partners to dispose of land and assets.
- We help families with property investment portfolios to form LLPs or limited companies to hold the property. This makes shared ownership of a variety of properties easier, so all family members benefit - and suffer any losses - from the whole portfolio rather than be subject to issues affecting a particular property in which they have an interest. This ensures that transfer and sharing of ownership of the beneficial interest in the portfolio is easier, as the legal title to the property will remain with the LLP or company and all beneficial rights (the real value of the assets) can be dealt with separately and allocated as desired.
- Shareholders' agreements and a company's Articles of Association protect the interests of shareholders in family companies - these limit transfer and issue of shares to reflect the family's intentions - determining whether shares can or cannot be transferred to spouses of family members and setting the exit arrangements on death, expulsion or illness. This might include sale back to other family members or the right to leave shares to children, siblings or trusts (for the benefit of children or spouses) under their will.
- Where the next generation is not involved with the family company, some owners prefer shares to be placed in employee benefit trusts, enabling extraction of value from their company but ensuring the

company continues under employee stewardship.

- The main shareholders may split their shareholding with their spouse to gain the benefit of their spouse's entrepreneur's relief on the capital gain arising in the event of a sale. However, it is important to consider what happens on divorce! We draw up shareholders' agreements with provisions to cover this event, since a main shareholder will want to ensure the shares return to him or her. Where appropriate this can be considered at the prenuptial stage and further supported by a prenuptial agreement.

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If you are about to make a lasting power of attorney or already have one in place, read on, as the wording of those documents is crucial if your investments are to be protected.

## Investments and your LPA

check the wording of your documents!

Over the years we have seen a significant amount of commentary regarding the importance of a lasting power of attorney (LPA) for property and financial affairs, and for health and welfare. These are vital documents that will ensure your financial affairs and health needs are looked after by your chosen attorneys in the event you are no longer able to manage them yourself.

The Office of the Public Guardian (OPG) and the Ministry of Justice strongly advise that LPAs should be included with any

other normal lifetime planning you might undertake, such as creating a will.

The crucial point to consider when deciding whether to make a LPA is that this cannot be done once you have lost capacity; the opportunity has passed and your family then has to apply to the court of protection in order to deal with your affairs. This is a very time consuming and expensive alternative and means decisions will be made by the court rather than your family or friends, the people who know you best.

# Wealth in relationships

Although other jurisdictions have recognised prenuptial agreements for many years, the courts of England and Wales have historically frowned upon the parties to a marriage attempting to govern their claims contractually, even saying that such agreements were contrary to public policy!

This paternalistic stance has, however, softened over the years and in a landmark case (*Radmacher v Granatino* 2010) the court's position on prenuptial agreements underwent something of a transformation. The outcome of this case was that if such an agreement had been entered into freely, with a full understanding of its implications, with knowledge of the other person's financial circumstances and with the benefit of legal advice, the court would uphold that agreement unless it was unfair to do so.

At the moment, prenuptial agreements are still not legally binding in the UK. By this I mean that the court still has the power to determine a couple's financial claims against one another on divorce. But as the above case shows, provided certain conditions are met when the

In recent years it has become increasingly common for lawyers to be consulted when a relationship is in its formative stages. Mel Loxley examines prenuptial and cohabitation agreements.

agreement is entered into, there is a very good chance that the terms of that agreement will be followed by the divorce court. At best, that agreement will be conclusive of those claims. At worst, the court will take into account the terms of the agreement and vary these where necessary to ensure a fair outcome.

Today, the court is recognising that couples should have autonomy and the freedom to determine their own fate.

The alternative? Without a prenuptial agreement those claims are left entirely at the discretion of the judge hearing your case. Whilst there is a statutory checklist of factors that guide the court in this exercise, the outcome can vary widely and, other than in short marriages, the court is likely to view the starting point as a 50/50 split of assets. When put in this way, not having a prenuptial agreement could be seen as quite a gamble!

Statistics tell us that couples marry later and that remarriage is on the rise. As a result, people have accumulated more wealth by the time they marry and therefore have more to lose should that marriage fail. Safeguarding wealth to ensure it remains yours or passes to your children from a previous marriage or relationship is not unromantic - it is sensible.

Cohabitation is the most rapidly growing family type in the UK today. It is just as important to protect wealth in this situation as it is in a marriage. A cohabitation agreement can set out how the couple will resolve any financial issues that might arise upon their separation and could save them costly litigation in the future. Further, the couple can enter into a Declaration of Trust if they are to own any property jointly, which will usually be conclusive evidence of their respective interests in the home they share.

If you have plans to cohabit or to marry but have not taken the opportunity to safeguard the wealth that you are bringing into that relationship, contact Mel on 01206 217384 or email [mel.loxley@birkettlong.co.uk](mailto:mel.loxley@birkettlong.co.uk).

In respect of a LPA for property and financial affairs, in 2015, the OPG issued guidance that unless specific wording is included within this LPA - wording known as a discretionary management clause - your attorneys will have no authority to appoint an investment manager, such as a financial adviser, or continue with an existing manager in order to manage your investments. This means that they would need to make decisions about your investments themselves, a factor that would inevitably make an attorney with no knowledge or experience in these matters very nervous. It could also result in the value of your investments being considerably diminished through the absence of expertise.

If you have a LPA for property and financial affairs already, but it does not include this clause, you can make an amendment so long as you still have capacity. Should you lose capacity with this clause not included in your LPA, an application would need to be made by your attorney(s) to the Court of Protection. They would need to take on the task of applying for permission to appoint an investment manager, thus delaying decisions and incurring costs.

For help and advice on any aspects of making a will or LPA please contact Emma.



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# financial advice

## Protecting wealth for future generations

It is said that failing to plan is, in fact, planning to fail. That certainly seems to be the case when it comes to protecting your wealth for future generations. Nicola Ward, Associate and Financial Planning Manager at Birkett Long IFA, explains:

\*Office of National Statistics  
\*\* Investec Wealth Survey 2014  
\*\*\* Coutts survey in 2014  
\*\*\*\* Legal & General survey 2017

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The following statistics illustrate that many people are not planning ahead to protect family wealth:

- £4.7 billion was paid in Inheritance Tax in 2015/2016\*
- Almost two thirds of British adults do not have a will\*\*
- Two thirds of millionaires worry about paying too much tax\*\*\*
- 42% of marriages end in divorce\*
- 51% of business owners leave no instructions about company shares in their will\*\*\*\*

As many people do not make a will, it is likely that they have not considered the importance of seeking advice on how to protect assets for future generations. Planning is essential but all too often we see clients who try to address these issues when it is too late, for example as a result of a serious illness. The following are just some of the areas I highlight to clients who are planning for the future:

- A will can ensure that assets are kept within the family and passed down through the generations, and can assist with inheritance tax (IHT) planning.
- A will takes effect when you die, whereas a lasting power of attorney gives you control, by nominating attorney(s), to deal with your wishes in your lifetime should you lose capacity.
- Trust investments - gifts into trust can potentially help to reduce IHT.
- Many people do not realise they can utilise annual gift “exemptions” and give away £3,000 (currently) each tax year without it being added to their estate. Other gift exemptions also exist.
- Consider your options in regard to the new Residence Nil Rate Band and seek advice

on whether existing trusts could be affected.

- The new pension freedom rules to allow pensions to pass to future generations.
- Pre-nuptial arrangements, covered elsewhere in this newsletter, can be invaluable, as many do not consider the impact of a divorce on family assets.
- Business owners should have appropriate agreements in place. Those who set up a business with family or friends sometimes fail to consider the importance of shareholder agreements as they assume that nothing can go wrong. Together with appropriate life assurance and critical illness cover, such agreements can safeguard the future of a business.

### In summary:

Do not assume that your assets will pass to your intended beneficiaries automatically; without a will, they will pass under the laws of intestacy.

Make a will and keep it up to date! Consider the value of a lasting power of attorney.

Review pensions and existing trust arrangements.

Annual gift exemption “allowances” can be a very effective way to transfer wealth.

Above all, start planning early and obtain expert financial and legal advice. Many leave it too late to provide a successful route to pass on wealth to the next generation. Birkett Long IFA and legal teams work together to help clients fulfil their financial goals.

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