



# For Life

HOW TO GUIDES

**Spring is finally here, after what seems a very long winter. It is a perfect time to get your affairs in order.**

In this edition we look at some "how to" guides and explain some of the processes for you.

At Birkett Long, our multi-disciplinary teams provide practical advice and offer guidance for you and your family.



**Emma Wraight**

01268 244149

[emma.wraight@birkettlong.co.uk](mailto:emma.wraight@birkettlong.co.uk)

## **Making the conveyancing process more effective**

Whether it's your first or last time, or you've bought or sold a property multiple times, it can be a stressful process.

## **How to create a prenup**

We have all heard about celebrities getting prenups, but why should you consider one?

## **What is the Help to Buy equity loan?**

For first time buyers it has become increasingly difficult to obtain a mortgage.

## **Do you need a lasting power of attorney?**

Lasting powers of attorney (LPAs) offer great reassurance to all age groups.

# Making the conveyancing process more effective

Buying or selling a property is not something that we do very often. Whether it's your first or last time, or you've bought or sold a property multiple times, it can be a stressful process.

The conveyancing process is generally straight forward and takes around 6-8 weeks. Each conveyancing transaction is different and there are a number of factors which can affect the process such as:

#### **The type of property**

If the property is leasehold, for example a flat or a retirement property, the process can take longer as there are often other parties involved, such as landlords or managing agents, who may have requirements on the sale or purchase.

#### **Obtaining a mortgage**

Mortgage offers can sometimes take a little while to come through and may have specific conditions included, which have to be complied with.



We often hear about prenups when celebrities hit the headlines whilst getting divorced, but why should you consider one?

## How to create a prenup

Prenup is short for 'prenuptial agreement' and provides couples intending to marry or enter into a civil partnership with clarity, transparency, certainty and protection about their financial affairs. If entering into a civil partnership, the prenup is called a 'pre-civil partnership agreement' or 'pre-registration agreement'. We understand that couples will often have assets that were accrued prior to the relationship that they wish to safeguard.

Furthermore, we live in an age where there is an increasing number of couples getting married later in life, having divorced previously – a staggering 92% of those marrying aged 65 and over in 2014 were divorcees.

#### **Planning**

Couples must get an agreement more than 28 days before the wedding or civil partnership. There are also requirements regarding the format of the document, how it is signed and witnessed, and

### **Renting property**

If you are not going to be living in the property and obtaining a mortgage, lenders may have requirements in respect of the tenancy or certain conditions that need to be complied with.

### **Tenant in situ**

Additional documentation will be required such as documents confirming that you have complied with your legal obligations as a landlord - Tenancy Deposit Certificates, Gas Safety Certificates and copies of the tenancy agreement.

### **Help to Buy or Help to Buy ISA**

There is a formal procedure that has to be followed, with Help to Buy being involved at various stages of the transaction.

### **Buying retirement property**

There may be formalities that have to be complied with, such as providing evidence of age or being approved by the managers of the retirement property.

### **Missing documentation**

Keeping copies of important documents such as planning permissions or Building Regulation Certificates, and having them ready for selling your property, is important and can speed up the

process. More often than not, duplicates of most documents can be obtained. It is important to remember that any documents that are given to you when you purchase a property are kept in a safe place, as you may need them when you come to sell the property in the future.

### **Unregistered properties**

Most properties are now registered at the Land Registry, but some still remain unregistered. When selling an unregistered property, it is important to provide all deeds and documents you have.

Although these factors can impact the process, the most important advice we can give is to "be prepared". By having your documentation in order and discussing your sale and/or purchase with a specialist property solicitor at the beginning of the transaction, they can guide you through the process more effectively.

### **Jemma Jones**

01206 217368

jemma.jones@birkettlong.co.uk

## **What is the Help to Buy equity loan?**

Help to Buy provides an opportunity to people who wouldn't normally be able to step onto the property ladder. It is a government scheme which can help buyers purchase a property with a deposit of as little as 5%. It is one of the most popular routes into home ownership but is only available to those who wish to buy a new build property. The scheme is not only available for first time buyers, it is also offered to existing home owners who may wish to sell their property and purchase a new-build instead.

It is well known that it has become increasingly difficult to obtain a mortgage product over the years, especially for first time buyers; however the Help to Buy equity loan works in a way where a 5% deposit is put down by you, the government lends you 20% of the property value as an equity loan and you take a mortgage on the rest of the property i.e. 75% of the property value, meaning that you seek a mortgage for a lesser amount and potentially increase your chances of eligibility. The Help to Buy loan is interest free for 5 years and can be repaid at any time or on the sale of your home.

### **Charlotte Brown**

01245 453869

charlotte.brown@birkettlong.co.uk

both parties must understand each other's finances.

### **Considerations**

Both must enter into the agreement freely and without undue influence or external pressure. If one person is in a dominant financial position they cannot use this to try to secure an unfair advantage - this provides the financially weaker party with security. It is very likely that the court will uphold the agreement if it is considered a qualifying agreement. It is important to get legal assistance to ensure that your agreement will be considered a qualifying agreement.

### **What to include**

This is your financial agreement. You can formalise what you would like to do with joint property, such as the family

home and joint bank accounts, assets owned before the marriage, inherited assets, and gifts received during the marriage. Sometimes people like to set out the financial arrangements for their existing children.

### **Making changes**

There are various circumstances when it would be necessary to review your prenup, and you should always seek legal advice at a time of significant change. For example, this can include having children, if one of you becomes incapacitated through disability, if bankruptcy affects you, significant financial losses, or significant financial gain.

### **Top tip**

If you both obtain independent legal advice, this provides strong evidence

of each of you understanding the implications of the agreement. It is always best to seek legal advice and assistance from an expert.



### **Harriet Whiteside**

01206 217301

harriet.whiteside@birkettlong.co.uk



# Do you need a lasting power of attorney?

Lasting powers of attorney (LPAs) offer great reassurance to all age groups. They allow you to name someone, of your choice, whom you trust to become your attorney (you can appoint more than one person) to look after your affairs in the unfortunate event of you not being able to do so yourself.



## **BIRKETT LONG LLP**

PHOENIX HOUSE  
CHRISTOPHER MARTIN ROAD  
BASILDON SS14 3EZ  
T 01268 244144

1 AMPHORA PLACE  
SHEEPEN ROAD  
COLCHESTER CO3 3WG  
T 01206 217300

FAVIELL HOUSE  
1 COVAL WELLS  
CHELMSFORD CM1 1WZ  
T 01245 453800

E [NEWS@BIRKETTLONG.CO.UK](mailto:NEWS@BIRKETTLONG.CO.UK)  
WWW.[BIRKETTLONG.CO.UK](http://BIRKETTLONG.CO.UK)  
TWITTER: [@BIRKETTLONG](https://twitter.com/BIRKETTLONG)

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There are two types of LPA. A property and financial affairs LPA, which will give the authority to your attorney/s to manage your financial affairs on a day to day basis, and a health and welfare LPA which will give your attorney/s the power to make decisions on your healthcare, such as medical treatment or your living arrangements.

If you decide that you do not want a LPA and you lose mental capacity, your family will need to apply to the Court of Protection for a deputyship order. The

process for this can take around 6 months and the cost can run into the thousands. The Wills, Trusts and Probate Team can take you through the process of preparing and registering a lasting power of attorney step-by-step so that, if you do lose mental capacity, your loved ones can look after your affairs from day one.

**Katey Stephenson**  
01206 217363  
[katey.stephenson@birkettlong.co.uk](mailto:katey.stephenson@birkettlong.co.uk)