THOMAS DUNTON
SOLICITORS

"The service I received was efficient and professional. I felt valued as a client."

NEWSLETTER

ISSUE 11 · 2020



WELCOME to the eleventh edition of the Thomas Dunton General Newsletter.

The articles in this newsletter have been inspired by the questions we've been asked at our library talks (email us if you'd like to come along), from social media, and general enquiries. We've put them together and written 'jargon free' articles that hopefully answer some of these questions. They focus on the law and how it can affect us all. We believe that knowledge is power; so take a seat, enjoy the articles and feel empowered by what you've read.

If you need us, we're here.

The Thomas Dunton Team

Living Together vs. Being Married

What does it legally mean for you and your children?

LET'S start with dispelling a myth that surrounds families: a common law husband or wife exists. It doesn't and it never has. Which is a shock for the 46%* of us who thought it did. So where does that leave the 3.4 million of us who live with our partner, have children, but are not married?**

For Children:

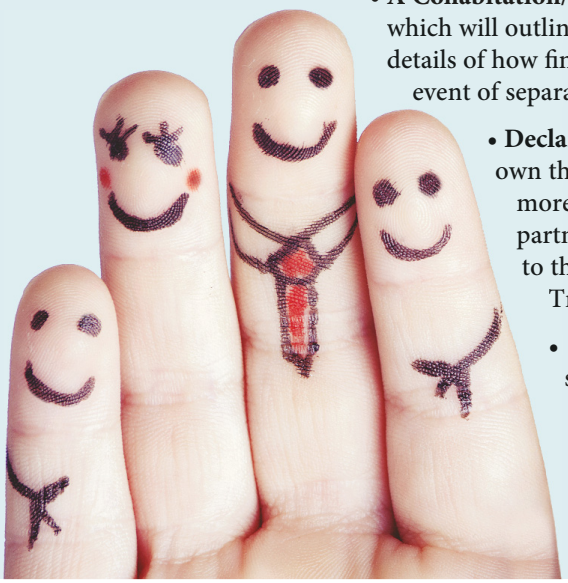
As long as the father of the child is named on the birth certificate, then he has parental responsibility (married fathers automatically have parental responsibility) and the legal provision of the child is provided for, regardless of you and the father's union.

For You:

The issue arises if you and your partner separate. You may find yourself with very few legal rights, especially when compared with those of married couples. You may not have the same rights to the family home or maintenance.

To protect yourself and those that you love you should consider the following:

- **A Cohabitation/Living Together Agreement** which will outline in a legal format, your wishes and details of how financial matters will be divided in the event of separation.
- **Declaration of Trust** — If you both own the property, or one person has paid more at the outset, or if you live in your partner's house but have contributed to the mortgage, then a Declaration of Trust is a wise choice.
- **Get a Will** — As grown up as this sounds, it will help your partner if you die, as they may not automatically have a legal right to a share of your house or savings; and vice versa.



**British Social Attitudes 2019 **ONS*

in this issue...

Probate & Wills
- Digital Legacy
- What makes a Will invalid?

Personal Injury
What does "no win, no fee" actually mean?

Family
- Living together or married: what does it mean for you and your children?
- No fault divorce
- Child Abduction

Conveyancing
- A rough guide to buying a home
- The benefits of instructing the same solicitor for my probate and conveyancing

"Excellent service, I can only recommend them." *"Excellent, efficient and knowledgeable."*

Digital Legacy: have you protected yours?



WE live in a world where our lives are played out through our online profiles; and yet few of us have thought about what will happen to these accounts once we die.

Who will be able to access and protect your digital assets and online memories after your death?

What are digital assets?

These are your online accounts: financial ones such as online banking, PayPal and cryptocurrencies. Along with your email accounts and sites like Amazon and eBay. It also, and maybe more importantly, relates to those of a sentimental value – the memories of your life displayed on your social media platforms: the videos, photos and comments that define you.

Do you own these assets?

Some assets are not owned, but licensed to you; this means that you cannot bequeath them in your Will. It is therefore worth checking the terms of service agreements of the products that you buy.

What is a digital legacy?

This relates to the online information left about you, your digital footprint, after you die. It is this which needs some thought and planning.

First things first

Having a Will is something that we should all have. It will outline your wishes once you are gone, and can include your intentions for your digital legacy. When writing your Will, you will need to appoint an executor. If your online life is complex, you may consider appointing a separate digital executor. They will be responsible for closing your email accounts, collating any digital assets and managing your social media profiles. A digital executor can be anyone over the age of 18: a family member, a trusted friend or a solicitor.

Die tidy

Ensure that you compile a list of all your online accounts. Even the ones that you don't use very often. This will include your banking, email, social media and entertainment accounts. Think about what you would like to happen with each one. Note your username and ID, and the websites pertaining to this. (No need to include passwords or PIN numbers.) Keep a copy of this with your Will.

No-fault divorce: who is to blame? Perhaps no-one.

THE Government has announced plans to overhaul divorce legislation which will remove the "fault based" aspect of the divorce process. The aim is to reduce the conflict between divorcing couples which can have serious long-term effects on children. The current law states that unless you have been separated for two years with consent, or five years without, you have to divorce on the basis of adultery or behaviour. A change in the law will mean the end of the 'blame game'. The Government has promised the new legislation will be introduced 'as soon as parliamentary time allows'.





Personal Injury: no win, no fee

What does it mean to you if you've had an injury that was not your fault?

PUT simply, it does what it says on the tin; that is, you should not have to pay any costs, which means there should be no financial risk to you.

No win, no fee is also known as a 'Conditional Fee Agreement'.

If you do win, you will have to pay your solicitor for their time. However, most of these costs can be claimed from the defendant.

You will also need to pay a 'success fee' but this should not exceed 25% of your compensation award.

There are other costs involved such as expert witness reports and court costs. These are called disbursements. Win or lose, these disbursements will be covered either by the defendant's insurers or by your own.

At Thomas Dunton, we will discuss this with you in more detail and make sure that you are fully aware of the process.

The information in this newsletter is of a general nature and may not relate to your individual circumstances.

"Thomas Dunton Solicitors provided me with a first class service."



The benefits of using the same firm of solicitors to deal with your loved one's probate and conveyancing.

TASKED with having to deal with the probate of your loved one's estate can be a daunting process. If you also have to sell their home then it can be overwhelming. Choosing a law firm that has specialist services under one roof can ensure a streamlined process which can also save you time and money. Here's how...

Joined up thinking

We can work simultaneously on the sale of the house and the handling of the estate; ensuring a quicker resolution. Funds received from one transaction can also be immediately used for the other. No delay in waiting for monies to be transferred.

Working together

Our departments are based in the same building which has its advantages. It allows for ease of communication between departments, shared access to information, no duplication of documents and ensures that staff can speak to each other face to face rather than through email or letter. This is especially useful if there are complex issues to resolve.

Efficient communication

With both departments working so closely together, you will receive updates quickly as there will be no delay in waiting for correspondence between firms. This also means calling one number if you require an update.

What makes a Will invalid?

NOT every Will is valid. The list below sets out some of the main requirements for validity:

- You must have the **mental capacity** to make your Will and **sufficient understanding** of what it means.
- You must not be **unduly influenced** when writing this. Others must not coerce you into leaving your assets to those that you do not wish to.
- A Will can also be **revoked** which will make it invalid. It can be revoked by later marriage, destroying the Will or making a new one.
- Your Will must be signed and dated by two **independent witnesses**. If the witnesses are beneficiaries of your Will then the Will itself will be valid but the gifts to them will fail. Witnesses should be over 18 and must witness you signing your Will. They must also sign the Will while you are present.
- If the Will is deemed to be a **forgery** it will be invalid.



Knowledge is Power

Check out our information leaflets to find out more about matters that could affect you.





JARGON BUSTER

WHAT DO ALL THESE LEGAL TERMS MEAN?

Conveyancing

Joint Tenants – all parties own the whole property, together.

Tenants in Common – each party separately owns a specific share of the property – these can be equal or unequal shares.

LTV (Loan to Value) – this relates to the ratio of a loan to the value of the property.

Mortgagor – the borrower of the mortgage; this is normally the homeowner.

Stamp Duty – this is a tax payable in England, on the purchase of a property valued over a certain price; it is normally paid by the purchaser.

Wills and Probate

Beneficiary – this is someone who inherits assets in a Will.

Executor – the person responsible for the administration of a deceased person's Will.

IHT (Inheritance Tax) – this is a tax payable on the estate of someone who has died if their estate is left to chargeable beneficiaries and is of sufficient value.

Intestacy – the rules which apply when a person dies without having made a valid Will.

LPA (Lasting Powers of Attorney) – legal documents that allow you to appoint someone else to make decisions for you if you are unable to do so yourself.

Probate – proof from a court of the right (under a Will) to deal with a deceased's assets.

Testator – a person who has made a Will.

"Excellent all round service."
"First class."



CHILD ABDUCTION

What to do if you are affected

IF you find yourself involved with child abduction, then knowing what steps to take, and the procedures involved, can help with this emotive matter.

What is child abduction?

If a child, under the age of 16, is taken (normally by one parent), **without the consent** of those that have parental responsibility (usually the other parent) out of the country that they live in (**habitual residence**) for longer than a month, this is classed as **child abduction**. It can either be to relocate the child (**wrongful removal**) or to extend a stay abroad (**wrongful retention**).

The 1980 Hague Convention

The 1980s Hague Convention, with 83 members, is a treaty whose aim is to return abducted children to their habitual country. An application needs to be made in the country that the child has been taken to, for an order for their return. If the country is a member of the Hague Convention, they will honour the treaty and look to return the child quickly.

If your child has been brought to England & Wales from a Hague Convention country, **Legal Aid** is available regardless of your financial situation, in order to make an application to the UK High Court for the return of the child.

What if my child is taken outside of the UK without my consent?

Act quickly. Time is of the essence in this instance and you should seek legal representation straight away. We can help.

What if my child is relocated within the UK without my permission?

It is not unlawful for one parent to take a child to another location in England or Wales. However, the left behind parent can apply for a **Prohibited Steps Order** to prevent this from happening. Likewise, if your child is being relocated elsewhere in the UK – i.e. to Scotland or Northern Ireland, there are steps you can take to try and prevent this. We can help with this.



Buying your home...

...the Rough Guide to making it yours.

1 APPLY FOR YOUR MORTGAGE Understand what is affordable and what you can borrow.

2 MAKE YOUR OFFER Remember to state that it is 'subject to contract'.

3 INSTRUCT A SOLICITOR The most important step to ensuring that it goes as smoothly as possible.

4 SURVEYS There are several types. If you have a valuation only survey, this is carried out for your lender to ensure that the property is valued correctly for your mortgage. If you wish to have a more in-depth survey you should have a home buyer's report/survey or a structural survey.

5 SEARCHES This will provide information about the property and the local area. The different types of searches are: Local Authority, Water & Drainage, Environmental and Chancel Repair.

6 THE SELLER'S TITLE DEEDS These will be investigated to confirm the legal owner, whether the property is mortgaged and any restrictions affecting the property.

7 INFORMATION FORMS The seller will normally be required to complete standard forms which will include:

PROPERTY INFORMATION FORM This form will include practical details about the property, including boundaries, notices and disputes. You will need to check these to make sure you are happy with the content.

FIXTURES & FITTINGS FORM This will list what the seller is leaving and taking from the property. Again, make sure you're happy with what is listed.

8 LEASEHOLD If you're buying a leasehold property, additional enquiries will be asked, particularly relating to service charges and insurance.

9 MORTGAGE OFFER Make sure this is in place, and you have the required deposit, so that you can exchange contracts.

10 EXCHANGE OF CONTRACTS When everyone is in agreement and all are ready to proceed, contracts will be exchanged. It also means that the deposit is paid to the seller's solicitors.

11 INSURE YOUR PROPERTY This is something that people sometimes overlook, but as a rule it is important to insure your property from the date of exchange.

12 COMPLETION On the day of completion, the balance of the purchase price is paid to the seller's solicitors and you now own your new home. Pick up the keys from your estate agent and enjoy!

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The information in this newsletter is of a general nature and may not relate to your individual circumstances. Please also note that details may change.