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GROSS & CO
SOLICITORS

Newsletter

Prevention Is Better Than Cure

A few statistics for you; nearly one in two marriages end in divorce. Nearly 78% of couples who divorce, will remarry. In 1991, 41% of all marriages, were second marriages. We like marriage. We like it so much, we often do it twice.

In the course of acting for a client going through a divorce, my client may exit the marriage with a house or houses, cash, or pension assets, or a combination of all three. My client may get a 50% share of the overall marital assets, and may consider that result fair in all the circumstances. So may it be. However, if my client then marries again, and that marriage also ends in divorce, is it then right and fair that my client's assets are divided up again, and possibly split 50/50 with the new spouse?

So why prevention is better than cure? Well, if my client had drawn up a pre-marital agreement with his/her new partner, the couple could have reached an agreement over what should happen in the event the second marriage did not last. This can, for example, ring-fence the pre-acquired assets from the first marriage. The agreement might provide that the assets from the prior marriage would remain where they were, and any assets acquired by the couple through their joint efforts after the marriage, were to be shared equally, if the marriage did not last. It can protect both parties, as both may be bringing assets into the second marriage.

Pre-marital agreements are also ideal when there is a family business, which has been owned and run by family members for many years. The last thing the family will want is a situation where part of the business has to be sold off as part of a divorce settlement, or even more disastrously, part of the business has to be transferred to a non-family member, as part and parcel of an overall division of marital assets.

If one party to the marriage is a farmer, whose family have passed down land through the generations, protecting the land for future generations is vital. It can be done, with a bit of forward planning, careful legal advice, and a pre-marital agreement.

You may ask if a pre-martial agreement is legally enforceable and 100% water-tight. That has been a moot point for many years. In late 2008 the legal position became much clearer. Now, providing both parties are frank with each about their financial position, providing each party had equal bargaining power, and there is reasonable provision made for the financially weaker party (if there is one), then a divorce Court will uphold the terms of a pre-marital agreement. Reviewing the terms of the agreement when, for example a child is born in to the marriage, is also advisable, to ensure a Court is convinced of the overall fairness of the document.

Hard bargaining tactics simply aren't appropriate in pre-marital agreement negotiations, of course. A pre-martial agreement is best discussed in the Collaborative Law process, where both parties sit down face to face, with their respective Solicitors, and discuss their wishes and objectives openly, and amicably. Pre-marital agreements and the Collaborative process are a match made in Heaven.

Prevention is always better, and far, far cheaper, than cure.

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WHERE WILL THE CHILDREN SPEND CHRISTMAS?

At this time of year, the family department at Gross & Co receive numerous enquires from separated parents about "which parent should have the children over the Christmas holidays?" Both parents would like the children to wake up on Christmas morning in their home, and to enjoy the magic of Christmas Day with them. That is only natural after all. So how should separated parents decide who sees the children when and how over the Christmas holiday?

There are no hard and fast rules; if at all possible, parents should agree between themselves how the holidays are to be shared, and they should start planning for the holiday season early. Failing to tackle this problem early (and October is not too early to start), can lead to the all too common battles in Court on Christmas Eve. County Court Judges in December spend a vast amount of their time deciding contact disputes between parents who can't agree on how their children shall spend 48 hours in one month of the year. Christmas is expensive enough for parents – avoid litigating about the children at all costs!

If the parents cannot agree, the matter can be decided by the Court, when one parent makes an application for a Specific Issue Order. The Court will decide on what contact arrangements will prevail on Christmas Eve and Christmas Day.

The interests of the children are the paramount consideration. In most cases, Courts consider that the children should spend Christmas Eve and sometimes Christmas Day, with one parent in year one, and the same arrangement for the other parent, in year two. Many children are very fortunate to enjoy two Christmas Day celebrations with their respective parents. What can be better than dividing the day equally between both parents. That is the ideal solution, but for families who live a great distance apart, it is not workable. To ensure that Christmas is a very peaceful and special time, spend December looking forward to Christmas contact arrangements with the children rather than spending time and money arguing it out in Court.

By the way, the last date for making an application for a Contact Order to be heard in time for Christmas, is December 15th.

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Directors' Residential Addresses

As from 1 October 2009 all Directors (and Company Secretaries if the Company has one) must provide a service address as well as a residential address – only the service address will appear in the Companies Register of Directors. The residential address will be protected information. The end result therefore is that Directors will be able to avoid having their residential addresses made public.

Existing Directors will continue to have their residential addresses publically available until such time as they apply to change the address for service.

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The New British Citizenship & Permanent Residence Rules

The British Government is introducing a policy of 'earned citizenship' and overhauling the Immigration Rules regarding permanent residence and British citizenship.

The new rules for citizenship and permanent residence are due to come in force in July 2011. Although the details of the new rules have not yet been drafted, some of the fundamental changes have been announced.

Rather than move directly from a temporary immigration category into indefinite leave to remain ('ILR'), migrants will first need to spend an additional period of temporary leave in what will be called 'probationary citizenship'.

The path to ILR will take longer than the path to British citizenship, as the UK Border Agency wishes to encourage migrants to become British citizens.

The UK Border Agency will expect migrants either to leave the UK after 5 years in an economic category, or to progress towards ILR by entering into probationary citizenship.

Similarly, migrants will have a limit as to how long they can spend in probationary citizenship before they must either progress to British citizenship or ILR, or leave the United Kingdom.

In order to obtain probationary citizenship, migrants will need to meet certain requirements, which have not as yet been published, but which are likely to include the following:-

(a) Continuing to meet the points requirements for their current visa.

(b) Possibly passing the 'Life in the UK Test'.

(c) Five years residence in the UK with no more than 90 days outside the UK each year.

(d) Proof of compliance with the law.

The period of probationary citizenship will be for a minimum of one year up to a maximum of five years, with the standard period of probationary citizenship being two years for citizenship, and three years for ILR.

The migrant may reduce the period of probationary citizenship by demonstrating that they have completed 'active citizenship'. This will include a number of possibilities, including volunteering and mentoring as prescribed and assessed by the UK Border Agency.

If a migrant incurs certain fines or charges, this will extend the requisite period of probationary citizenship.

In order to apply for ILR or British citizenship after the period of probationary citizenship the applicant must demonstrate the following requirements:-

(a) Life in the UK Test and English language;

(b) Continuing to meet the requirements of their visa;

(c) Maintenance; applicants must show that they are able to maintain and support themselves and any dependants without recourse to public funds; and

(d) Continued residence in the UK with no more than 90 days outside the UK per year.

Transitional arrangements will be included. These will allow anyone having been granted ILR prior to 21st July 2011, or who has submitted an application for ILR prior to this date, which is subsequently granted, being allowed to apply for British citizenship at any time up to 2 years after 21st July 2011 under the Rules currently in force. In addition, individuals who have entered the UK under the Highly Skilled Migrant programme will be allowed to continue to British citizenship under the current rules.

If the Conservative Party wins the next Election, there will undoubtedly be changes to UK immigration law, and it is highly possible that there will be changes to these proposals.

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