



welcome to this latest edition of Newsbrief.

Here at Berwins we spend a lot of time trying to put ourselves in our clients' shoes, and asking our clients what they want; and around this we have developed the values which we believe you need from us – to make a real, positive difference to your own affairs. We think, above all, you need to know that we genuinely care for all we do and

for you - it's a core value we try to instil throughout the organisation, at every level. We believe we need to be really accessible to you; to take ownership and work with you and with each other to achieve the best outcome for you; and to do this with a genuine passion.

These are goals about which you've never "Done that" – so we'll keep working on them to ensure that Berwins is the best place you could ever go for your legal advice.

Paul Berwin, managing director.

fancy a quickie?

"Jordan and Peter Andre divorce in 42 seconds"

"Gary Lineker's 20 year marriage over in just 70 seconds"

"Amy Winehouse granted quickie divorce"

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It is almost impossible these days to pick up a newspaper or magazine without learning of another celebrity being granted a "quickie divorce".

This buzz phrase implies that there is a new or special procedure for getting divorced which is different to what has gone before. In fact, quick divorces have been around since the 1970s. There is only one ground for bringing a divorce, which is that the marriage has irretrievably broken down; there are then five ways for the couple to 'prove' this fact to the court. Two of these five reasons are what makes a divorce a (relatively) quick one: unreasonable behaviour and adultery.

If you can substantiate either of these two grounds there is no requirement for you to wait two years to bring a Divorce Petition, you can do so immediately. That however is where the quickie divorce runs out of steam. From the moment the Divorce Petition is issued, the divorce becomes subject to time frames imposed by the formal court-driven process and the reality is that these will take about five months before the decree absolute is obtained. It is only at that stage that the couple is divorced.

The tabloids are becoming notorious for revealing how a celebrity was divorced "in seconds". They are in fact referring to the time it takes the judge to read out the Decree Nisi (certificate entitling the parties to later apply for Decree Absolute). In reality the couple are in fact still married – another tabloid misconception.

The concept of a "quickie divorce" is more of a myth than a reality but, if you do want a speedy exit, these are the areas to focus on:

Agree with your spouse the grounds for the divorce.

Ensure that you both take proper independent legal advice.

Reach an agreed financial settlement.

Berwins' Family Team has again been listed in 2010's Legal 500 for the quality of its work. Contact Stephen Root or Sarah Smith on 01423 850336 or Family@berwin.co.uk.

intestacy changes - good news for unmarried couples?

We all know we should make a Will as the alternative - the intestacy rules - are inflexible and unlikely to match our own circumstances. The Law Commission proposes to up-date these rules, especially as they relate to unmarried couples. But, will the new rules fit your needs if you are living with someone?

At the moment, unmarried couples who live together are not entitled to anything if their partner dies without leaving a Will, regardless of the length of their relationship or whether they have children together. Surviving partners often have to face the difficult decision of whether to go to Court to fight for a share of their deceased's partner's estate. However Court action is only an option if you've been financially maintained or have lived together for at least two years prior to the death. The Court process is costly, time-consuming, stressful, and carries no guarantee of success.

The Law Commission now proposes that

couples who have children together, or who have lived together for 5 years or more, should automatically have the same intestacy rights as married couples. They also say that couples who have lived together for more than 2 years, but less than 5, should be automatically entitled to half the amount a spouse would receive under the old intestacy rules.

Presently, what you are entitled to if your spouse dies intestate depends on who else is living at the date of death. Where the deceased leaves children, spouses are entitled to the first £250,000 of the estate, together with personal effects and a "life interest" (a right to receive income) in half of whatever else is left. Where the deceased had no children but there are other relatives, the spouse is entitled to the first £450,000, and half of whatever else is left. Where there are no other relatives, the spouse inherits everything.

The proposed new rules are very controversial. While many people may be

delighted that the law finally recognises that people cohabit, the changes will not suit everyone. How much a partner will receive still depends on the length of the relationship and who else is living at the date of death. And for some people, cohabiting is a deliberate choice, and they may not want their partner to receive anything. They may prefer for someone else to inherit, for example, children from a previous marriage.

The only sure solution is to make a Will. You can then decide to leave exactly what you want to whomever you want, rather than rely on the Law Commission's idea of what's right for you.

Berwins' Wills Trusts and Probate Team has again been listed in 2010's Legal 500 for the quality of its work. Contact Julie Jewers on 01423 850333 or WillsandTrusts@berwin.co.uk

when is a redundancy not a redundancy?

This may sound like a silly question but both commercial clients and individuals sometimes need advice as to whether a real redundancy situation exists.

The legal definition of redundancy can be found in the Employment Rights Act 1996 Section 139 and in short a redundancy situation arises only in the following circumstances:-

1. Complete closure of a business
2. Closure of part of a business
3. If an employer has a need for fewer employees to carry out a role of a particular kind in the business.

If dismissal of an employee is for any reason other than the above, the dismissal will probably not be on the grounds of redundancy.

The most common misconception of employers is that if they outsource a part of their business for example catering or IT services, the employees designated to that role in the company become genuinely redundant. This is not the case. In those circumstances the employees are probably covered by the TUPE Regulations and will automatically transfer to any new service provider. Dismissal as a result of a TUPE transfer is automatically unfair.

Similarly, in the current economic climate, some employers seem to be making "redundancies" which do not, on the face of it, seem legitimate under the section 139 definitions.

Dismissals which are actually on the grounds of age or as a result of longer term capability issues are not genuine redundancies and different procedures apply.

In genuine redundancy situations usually a particular role is redundant and/or there is a need for fewer employees to carry out a particular role. For example, if a supermarket chain employed 6 butchers and business was poor, a genuine redundancy situation may exist in that only 4 of the 6 butchers could be justifiably retained on economic grounds. In this scenario the supermarket would have a fair reason to dismiss 2 employees on the ground of redundancy however any selection process would also have to be fair. The butchers would have to be placed in a pool and scored against a set of objective criteria. It is not permitted for the employer to choose the oldest or the highest paid for example and short-cut the procedures. The two butchers with the lowest scores would then be at risk of redundancy and a consultation procedure should follow.

Marie Walsh is a Solicitor in Berwins' Employment Law Team and can be contacted on 01423 542777 or Employment@berwin.co.uk

more legal duties for landlords

Many landlords are in the dark about the Regulatory Reform (Fire Safety) Order 2005 which came into effect in 2006 and applies to all non-domestic premises in England and Wales including the common parts of blocks of flats or houses in multiple occupation.

In such circumstances, a fire safety risk assessment must be carried out. Failure to have such an assessment carried out is a criminal offence and can be enforced by the fire authority in which case the owner of the building will be criminally liable. In the cases of blocks of flats or properties converted into flats, where the freehold is owned by a management company, the directors of that management company will be criminally liable. As well as there being the risk of prosecution, non compliance with the regulations may also vitiate buildings insurance the next time the policy is up for renewal. Insurers will certainly require such an assessment before they commit themselves to reinstate after a fire.

If you are purchasing a property that is affected by the legislation, you should ask for sight of the fire safety assessment. If it is evident that no assessment has been carried out, then the insurance position should be considered and the possibility of criminal prosecution must also be

borne in mind if, in addition to purchasing a property, you are also required to serve as a director of the freehold owning management company.

Rachel Robinson is a Solicitor in Berwins' Residential Property Team and can be contacted on 01423 543134 or Property@berwin.co.uk

FOCUS ON... Marie Walsh



With Natalie Saunders and Caroline Acton, Marie completes the Berwins' Employment Law Team. Marie has considerable experience in advising both employees and employers in relation to Employment Tribunal Litigation, conducting her own advocacy and when not helping clients is a visiting lecturer in Employment Law at York College of Law. In addition to Tribunal work Marie deals with non-contentious matters such as contracts of employment, redundancy procedure advice and transactional issues. Marie's extensive and loyal client following comments on her approachability, her sound common sense and sometimes wicked sense of humour

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