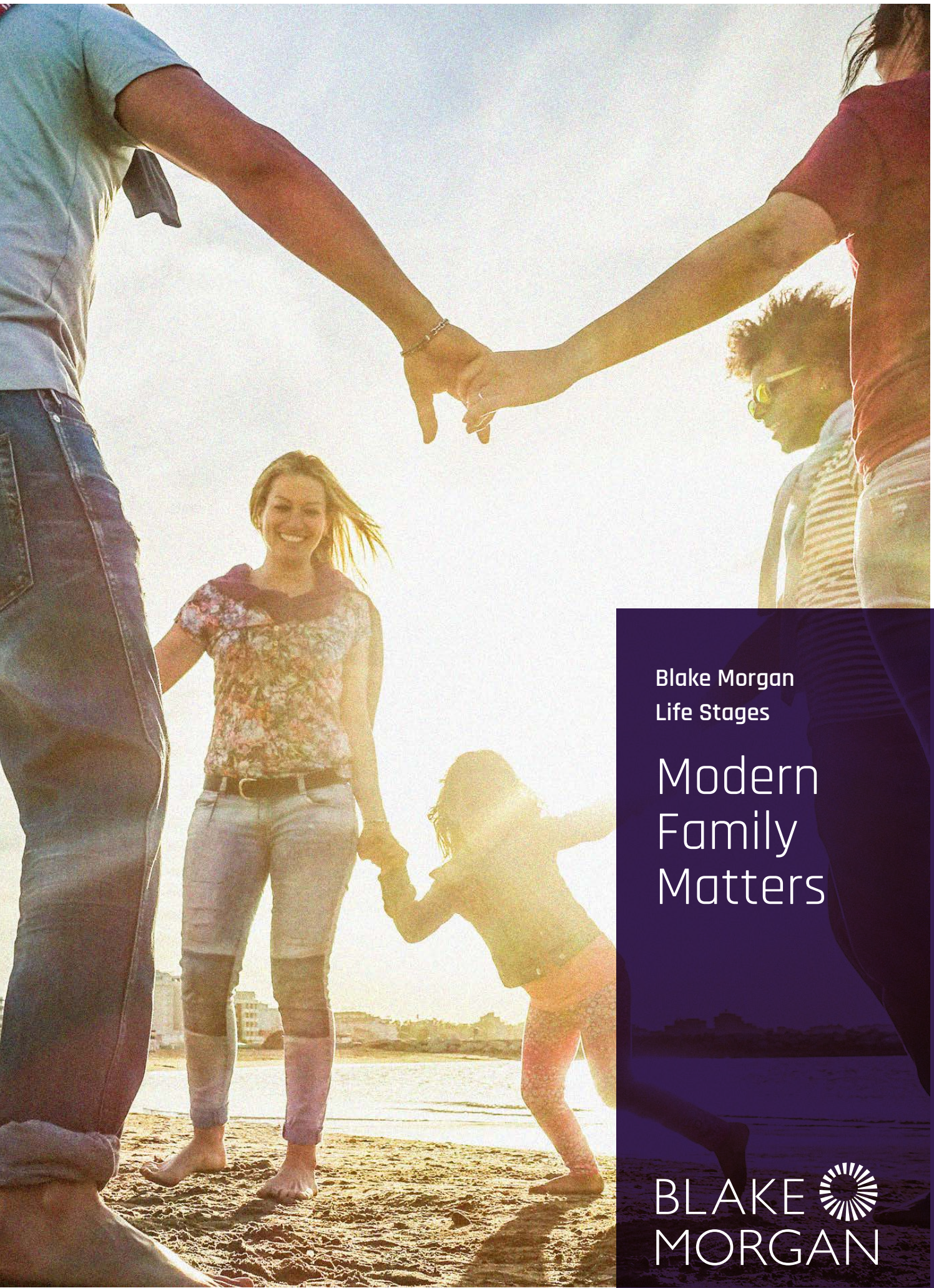

Blake Morgan
Life Stages

Modern Family Matters

BLAKE MORGAN

Contents

Choice is a wonderful thing, and successful people running businesses are more empowered than ever before when it comes to managing family life...

The modern family – it's complicated

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The modern family is a complex place.

In today's world, we're living longer, getting married later, if at all and we're not afraid to divorce if things don't work out. Our family lives are more diverse, complex and blended – and then span three or four generations. Second marriages and people choosing to not get married at all can make financial matters more complicated.

Choice is a wonderful thing, and successful people running businesses are more empowered than ever before when it comes to managing family life – but does that really make planning our finances, protecting our families and managing our assets easier?

Blake Morgan has carried out research into the challenges faced by successful business owners in the UK, and our findings showed that while family has never mattered more, understanding how to plan for and manage family demands has never been tougher.

What's striking about the results are the pressures the 'sandwich' generation is facing, where the dual challenge of providing for children and ageing parents poses some big questions. While 37 per cent of those aged 35–44 told us that one of their main priorities for the future was providing for their children, 18 per cent of the same age group also said looking after ill parents was a key concern. That age group isn't alone either, with a fifth of those under 35 having to plan their future around caring for ageing parents. Overall, 12 per cent of those surveyed said they were concerned about their responsibilities towards ill parents.

And this can be stressful, particularly if you don't have much available time. Almost a third (29 per cent) of those we surveyed said that their greatest day-to-day worry is trying to balance family with their work-life commitments – with 17 per cent unable to take holidays and 14 per cent struggling to maintain healthy family relationships.

Finding ways to keep assets in the family was another area of focus for successful business owners. For a quarter of those we asked, protecting personal assets is a pressing priority for the future, and for a further 11 per cent managing their property investment is a key focus.

Ultimately however, providing for your family is about making sure the right legal plans and structures are in place as families evolve and grow, and the research suggests that this is where successful people face their biggest challenge. Funding your children's or grandchildren's education, helping them onto the property ladder, and navigating the shifting sands of social care reforms mean that the assets you have carefully built up need to be just as carefully looked after and managed.

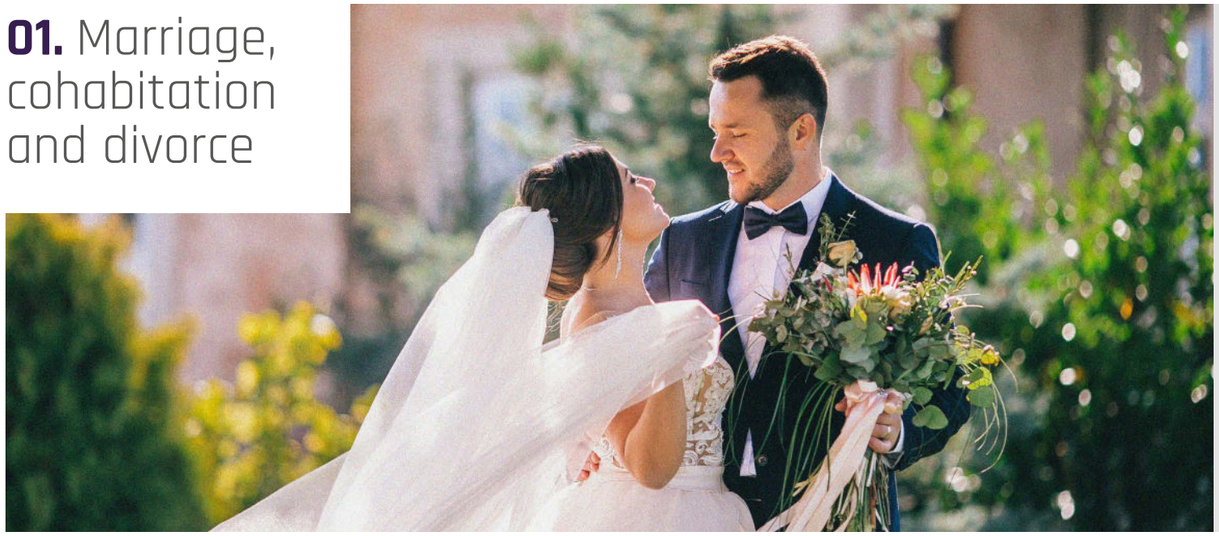
And from a legal perspective, we always need to be prepared for the unexpected and sudden changes in circumstances.

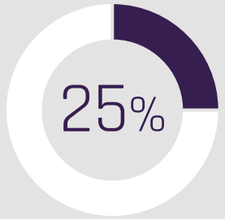
In the first of our series of Life Stages reports, Blake Morgan looks at the uncertainties and challenges presented by modern family life, and what you need to do to protect your personal assets.

Helen Bunker

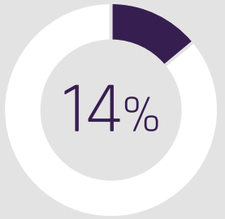
Helen Bunker is the Chair and Business Group Head of Private Client at Blake Morgan

01. Marriage, cohabitation and divorce





25% of those we surveyed said protecting their personal assets was a key priority when planning for the future



14% of people say that family relationships cause them the most day-to-day stress

The meeting of two minds in a marriage or civil partnership is always something to be celebrated – but it's increasingly a meeting of two sets of assets, dependants and responsibilities too. And while you never want to anticipate a relationship breakdown, it can happen. As our research shows, relationships at home are cited as the greatest cause of stress for almost 14 per cent of people. This poses some tough questions that need answers, but having a plan in place for any eventuality can alleviate worry and family politics.

Pre- and post-nups

Pre-nuptial or post-nuptial agreements can be used to provide more certainty and reassurance to couples about how their finances would be treated if they were to divorce, annul their marriage or separate. This is important in situations where you may want to protect the financial interests of children from a previous relationship, your inherited wealth or wealth generated from business endeavours prior to the marriage. There may also be a need to think about family interests in any businesses you may run – a significant worry for those we surveyed.

Whilst pre- and post-nuptial agreements are not binding in England and Wales, criteria set out by the Law Commission increase the chances that an agreement will be upheld by a Court if queried by one party. One of these criteria is that the agreement must be signed at least 28 days prior to the wedding to ensure all parties are entering freely and voluntarily into the agreement without undue pressure.

It's vital to allow plenty of time to consider the agreement and its content, as they can take longer to negotiate than the happy couple anticipated.

It may appear to be an arduous exercise in paperwork in the run-up to a wedding, but ultimately a pre- (or post-) nuptial agreement reduces the risk of future litigation and headaches. In the absence of a pre- or post-nuptial agreement, or any agreement on the terms of the separation, parties would be reliant on the current law to dictate how their assets will be divided in the event the relationship breaks down.

Civil partnerships

Same-sex couples entering into a civil partnership are afforded exactly the same rights as in a marriage. For example, as the rules for entering into a civil partnership mirror those for marriage, so the rules for dissolution of a civil partnership mirror those for divorce (except that adultery cannot be used as a supporting fact).

The only difference is that only same-sex couples are currently permitted to enter into a civil partnership.

Cohabitation

Unmarried cohabiting couples do not enjoy the same legal rights and protections in the event a relationship breaks down.

Even for couples who have been together for a long time or have children together, there is no such thing as a common-law marriage.

Therefore, if you buy property with a long-term partner, it's important to enter into a Declaration of Trust to set out what your interests in the property will be if you split up (amongst other things).

You may also wish to consider a cohabitation agreement. These agreements can avoid difficulties by setting out what happens financially, for instance, if one of you takes time off work through illness or to have children.

Above all, it is important to ensure that your Will also reflects your wishes.

Divorce and civil partnership dissolution

Obtaining a divorce is not necessarily going to be straightforward, even if both parties agree that the marriage is over. Challenges often arise in agreeing the reasons for the separation, how and when to separate, where to live, what arrangements to make for children and the financial settlement.

It is not necessary for financial discussions to be completed by the time the divorce is finalised, and they are often in the early stages if finances are complicated. Even when matters are agreed it can take several months to conclude them. However, it should be possible to resolve immediate problems and make temporary maintenance arrangements.

A divorce takes approximately four to six months, although the Decree Absolute is often not obtained until the finances are resolved, which can be much later.

Alternatives to the Family Court

The breakdown of a relationship is inevitably a difficult time, and there are a number of different approaches to resolving issues without necessarily having to use the court process. Alternative dispute resolution (ADR) includes mediation, collaborative law and family arbitration, and is available for resolving family issues – be they finances, property or issues relating to children.

Mediation

Family mediation puts the client in control, with the help and support of highly-trained professionals who can help the parties make decisions about their future.

Research shows that mediation is often the best way for families to resolve conflicts. It is proven to be faster, less costly and – crucially – less adversarial than divorcing through the courts. Unfortunately, too few people know about it, and end up locked in angry disputes that have far-reaching consequences for them, and for their children.

Mediation can help a couple take control of their family's future, making constructive decisions together rather than asking someone else to decide what should happen to their children or finances.

Collaborative law

Collaborative law was developed by family lawyers to manage the divorce process in a more dignified manner. Collaborative law operates as a series of face-to-face four-way meetings, where the agenda is set by the clients and is aimed at enabling the parties to resolve the issues resulting from the breakdown of a relationship.

The process requires the parties and their solicitors to sign up to an agreement promising to try to reach an amicable consensus on all issues without recourse to court proceedings. Couples are assisted by their respective solicitors to work out issues such as children or finances without risking the threat of court action during the negotiations. The parties instruct their own solicitors and have separate legal advice. There is no limit to the number of meetings that can take place.

Judicial separation

For couples who may not want to divorce, perhaps for religious reasons, an alternative option is to seek a judicial separation.

This does not legally dissolve a marriage, and the parties will not be able to remarry. But a judicial separation does have greater significance than couples deciding simply to live apart, as the Family Court can make a range of financial orders (by consent or otherwise) that are not available if formal separation proceedings are not started. It is important to note that the range of financial orders is more limited than those available upon divorce.

As well as being a useful mechanism if there are religious reasons to avoid a divorce, in some circumstances a petition for judicial separation may preserve certain pension rights which would otherwise be lost upon divorce. This can be crucial where the parties are approaching retirement age.

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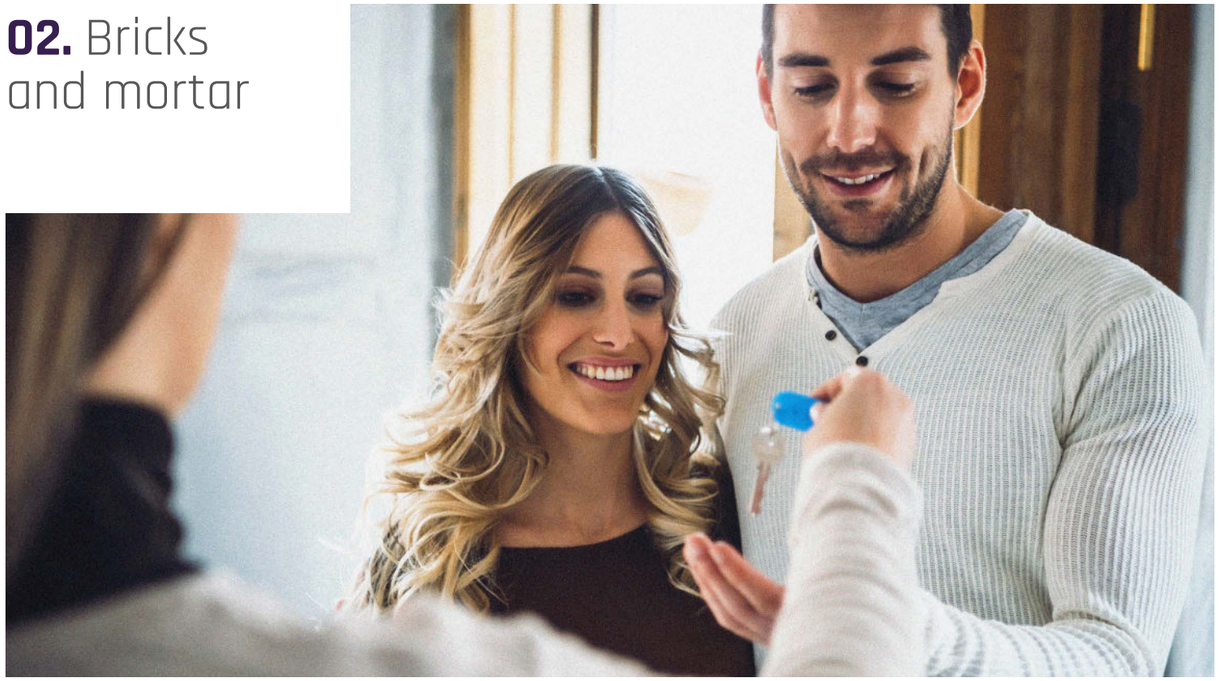
Collaborative law was developed by family lawyers to manage the divorce process in a more dignified manner

02. Bricks and mortar



Property has long been seen as a nest-egg for retirement and a way of passing on wealth to the future generations, and the results of our survey suggest this is unlikely to change – even among younger people. Our research found that for almost 22 per cent of those aged 18-34, having a successful, well-managed property portfolio is a key priority when planning for the future.

Bank of Mum and Dad

There's no escaping the rise of the 'bank of mum and dad', and according to Legal and General almost 27 per cent of home buyers will borrow from their parents. But there are real considerations when it comes to being a lender.

Whether the 'bank of mum and dad' choses to loan, gift or invest in bricks and mortar alongside a child, each decision has tax implications. It is recommended – although not a legal requirement – to formalise any loan agreement. Including details of the loan (interest rate, terms and the repayment plan) in a written document, signed by all parties, can be useful if an unforeseen circumstance arises, such as the death of a parent before the loan is repaid. In this case, for Inheritance Tax purposes, the loan value would remain part of the parent's estate at death and the aggregate estate would be taxed in the normal way, at 40 per cent over the tax-free allowances, subject to any other considerations.

Gifting money would constitute a Potentially Exempt Transfer (PET), meaning if the parent survives for seven years, the entire amount should fall outside of his or her estate for IHT purposes. However, if he or she dies within that seven-year period, the child may need to pay tax on the value of the gift, depending on the size of the net estate.

Similarly, appropriate documentation would be recommended if parents decided to invest alongside their child. A Declaration of Trust should be drawn up to document the respective beneficial interests of all parties.

Co-ownership and Cohabitation

Joint tenants and tenants in common are the two ways co-owners can hold property. As joint tenants – often the case for married couples – no one party has a specified share in the property. This allows ownership to transfer automatically to the survivor in the event of the death of one co-owner.

For tenants in common each co-owner will own a specified share in the property, either 50/50 or otherwise. Co-owners can pass on their share in the property, during their lifetime or as stated in their Will. Thus, it is advisable that co-owners who are tenants in common have a Will in place.

Unmarried couples do not have the legal rights and protections afforded to a married couple, in the event of a relationship breakdown. If a property is registered in the sole name of a cohabitant, individual contributions to the purchase price will need to be considered in the case of a breakdown of a relationship.

A Declaration of Trust and/or a cohabitation agreement setting out each party's interest in the property is therefore recommended when an unmarried couple buy a property. The agreement can extend to cover how bills and house finances are split, and what happens if one party takes time off work through illness or parenthood.

A similar agreement is recommended when buying property with another individual, perhaps a friend or sibling, as an investment or otherwise. It is always wise to consider what should happen when one or both parties wish to sell or end the agreement.

Making the most of your leasehold property

Changes to property law in the last fifty years have provided a number of options for owners of residential flats (commonly referred to as tenants) wanting to take control of their leasehold property from the landlord, often the freeholder of the building. The enthusiasm of property owners to exercise the legal rights available to them as tenants has never been greater.

Tenants should make sure that they are aware of their options at the earliest possible opportunity, as putting things off can lead to increased expenses and lengthy delays should the property need to be sold. For leases of flats in particular, the key date to note is the point at which the lease falls below 80 years – payments to the landlord are significantly less if matters can be dealt with prior to this.

Lease extensions

For tenants who have owned their flat for at least two years, an extension to the existing lease term of a further 90 years plus the removal of the obligation to pay ground rent can be acquired from the landlord using the statutory procedure. For those tenants who do not meet the necessary qualification criteria, or for those who do but wish to have more flexibility, lease extensions can be agreed with the landlord following a period of negotiation.

Buying the freehold

The statutory procedure for collective purchase of the freehold is similar to the process for obtaining a lease extension via the formal route. Qualifying criteria relating to the building and the tenants must be met before a notice of claim is served on the landlord; this includes a minimum number of tenants required to participate in the purchase. It is the responsibility of the tenants to propose a purchase price to the landlord.

Right to manage

Although buying the freehold interest in a building gives tenants complete control over its management, it can be a time-consuming and costly process. The modifications made to enfranchisement law in 2002 introduced a new 'right to manage', allowing tenants unhappy with the way in which their building is being managed to take responsibility for management functions (either of a landlord or management company) under their leases, without having to pay a purchase price to compensate the landlord for the financial implications of the loss of freehold interest.

Structuring how you hold residential property

Changes to the Stamp Duty Land Tax (SDLT) legislation in 2016 and to tax relief on buy-to-let rental income (phased-in between 2017 and 2020) have led many property buyers to question the true cost of their property ownership.

Stamp Duty Land Tax

In April 2016 SDLT on additional properties increased by 3 per cent. The surcharge is not applicable to a person who owns only one residential property, regardless of whether the property was purchased for owner-occupation or as a buy to let. There are a number of reliefs and exemptions, such as if a single purchaser, with an existing property portfolio, is buying a property to replace a main residence. For the exemption to apply to multiple purchasers, all purchasers must satisfy the terms.

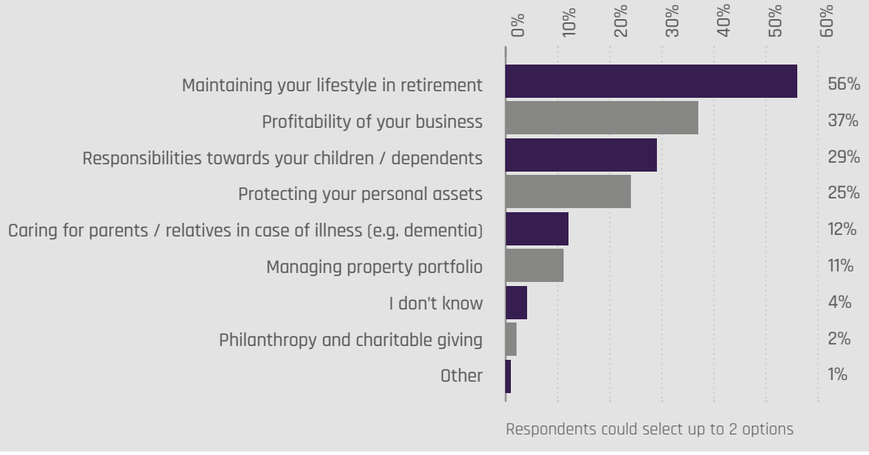
Tax relief cuts

Before the phasing-in of tax relief cuts, a process that began in 2017, landlords could offset interest paid on a mortgage from their profits before tax. With no tax relief available at all from 2020, some landlords are starting to think about whether ownership in a company might be the better option.

Annual Tax on Enveloped Dwellings (ATED)

For UK residents and non-resident 'non-natural persons' – essentially companies – who own a UK residential property valued at over £500,000, they also have ATED to consider. Although there are several exemptions and reliefs which can be claimed, there is no 'one-size fits all' approach to property ownership and every situation needs to be carefully considered.

What are your main priorities when planning for the future?



Respondents could select up to 2 options

03. Caring for children and parents

The twin preoccupations of looking after children and elderly relatives can put a strain on those sandwiched in the middle and – as our research shows – 41 per cent of people are having to plan around their responsibilities towards dependants. To complicate matters further, family units are becoming more fluid, with families having to contend with cross-border issues or becoming parents by other methods, such as adoption and surrogacy.

Surrogacy

Surrogacy arrangements are not currently enforceable in UK law, and it is a criminal offence to advertise that you are looking for a surrogate or are willing to act as a surrogate. Those wanting to engage in surrogacy, either as intended parents or surrogates, are encouraged to join one of the three main UK surrogacy organisations – Childlessness Overcome Through Surrogacy (COTS), Surrogacy UK, or Brilliant Beginnings.

The legal parent of a child at birth will be the surrogate (and their consenting spouse or civil partner if they are married or in a civil partnership). This means a parental order process must be followed to transfer legal parenthood to the intended parents following the birth.

However, the intended parents cannot begin the parental order process until after the birth of the child and must apply within six months of the birth. Furthermore, the consent of the surrogate (and their partner if married or in a civil partnership) cannot be obtained until six weeks after the baby's birth. Surrogates cannot receive payment beyond reasonable expenses during the parental order process, to be reviewed by the Court.

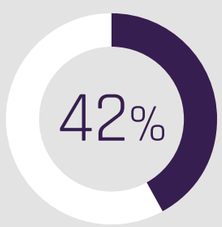
Taking children across borders

Any person named in a Child Arrangement Order (formerly a Residence Order) in the case of a separating or divorced couple, can take a child out of the country for up to 28 days without permission from the other parent.

However, permission must be sought if the holiday occurs during time the order says the other parent should have the child, such as their weekend.

If the stepmother or father (i.e. a person not named in a Child Arrangement Order) wishes to remove a child out of the jurisdiction of England and Wales, they must seek the permission of the child's natural parents, or alternatively authority from the Family Court. Likewise, grandparents wishing to take a child abroad must seek permission from both parents before doing so.

If permission is not granted by one party, a Specific Issue Order application can be made to the Family Court, requesting the Court to grant permission. An application to the Court is an expensive and time-consuming process so trying to reach an agreement through discussions in mediation, or through negotiations, may be a more constructive way of approaching the issue.



42% of 18 to 34-year olds say that balancing work and family life causes them the most stress day-to-day

With life expectancy ever-increasing and **9.9 million** new cases of dementia reported each year worldwide, people are becoming increasingly concerned about their long-term health.

If a parent wishes to permanently relocate overseas with their child, they must obtain the agreement of anyone else with parental responsibility for the child or apply to the Family Court for an order requesting permission to permanently relocate. If the latter is required, factors such as housing, schooling, medical care, and contact with the other parent will be considered in addition to the child's welfare.

Caring for parents

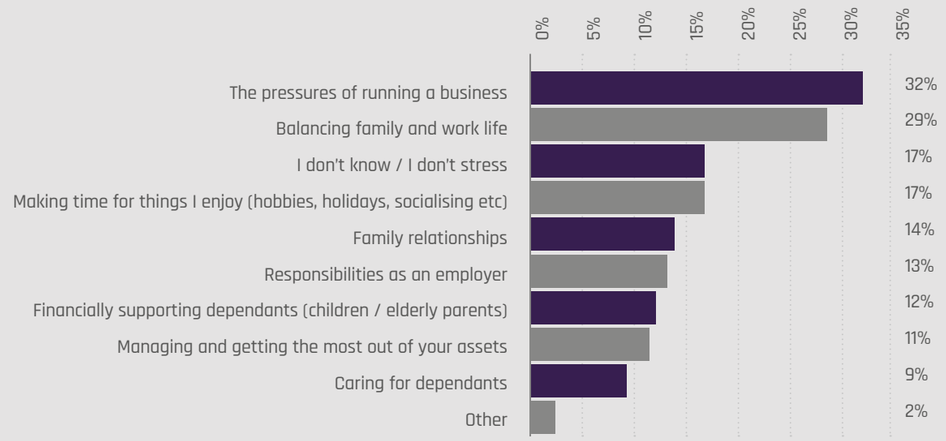
With life expectancy ever-increasing and 9.9 million new cases of dementia reported each year worldwide, people are becoming increasingly concerned about their long-term health. In turn, many consider what treatment they would want to receive, and in particular refuse, if they became seriously ill and were incapable of communicating their wishes to their families and to medical professionals.

It is therefore unsurprising that many consider making a Living Will, also commonly known as an Advance Decision or an Advance Directive. A Living Will is an umbrella term which covers several quite distinct types of advance planning around health and welfare matters: advance decisions to refuse life sustaining treatment, advance decisions to refuse other types of treatment, and advance statements setting out more generally your views and wishes in relation to your future care and wellbeing.

An Advance Decision is sometimes used as an alternative to a Health and Welfare Lasting Power of Attorney (LPA) (see page 10) and may be more appropriate in certain circumstances. By its very name it is anticipatory. It can only be made by an adult who is capable of making decisions about their medical treatment and who has been properly informed of the implications and consequences of their decision.

It is possible for a person to make a purely verbal Advance Decision, for example to tell the doctor on admission to hospital that they do not wish to have a particular specified treatment. However, if an Advance Decision is intended to apply to life-sustaining treatment then it must be in writing, must be signed by the maker in the presence of a witness who must also sign the document, and must include a clear, specific written statement that the Advance Decision is to apply to the specific treatment, even if life is at risk. Practical issues around finances are best addressed through a Property and Financial Affairs LPA (see page 10).

What causes you the greatest amount of stress in daily life?



Respondents could select up to 2 options

04. Mental capacity

One of the biggest uncertainties in life is health. According to Cancer Research UK, 50 per cent of those born after 1960 will be diagnosed with some form of cancer, and the Alzheimer's Society estimates there will be two million people affected by dementia in the UK by 2051. Even our research shows that 20 per cent of those under the age of 35 are having to plan their future around caring for ill parents. As a result, putting a plan in place early can help family members ensure their loved one's wishes are properly carried out.

An ageing population has resulted in a rise in the number of children caring for elderly parents. Unlike caring for a child, in this case the party being cared for is entitled to their own say and decisions must be made reflecting this right to autonomy.

Lasting Powers of Attorney

It is possible to make arrangements for someone to look after your assets, financial affairs and health and welfare, either now or in the future if for any reason you are unable to do so personally. This can be achieved by signing a Lasting Power of Attorney (LPA). By this document you can appoint one or more persons, known as 'attorneys', to act generally in relation to all your affairs, or alternatively in relation to specific affairs. If more than one attorney is appointed, it is possible to direct that they should act either together, in which case all attorneys must sign any document or make decisions or independently, in which case any of the attorneys may act as appropriate and convenient.

Health and Welfare LPAs

Health and Welfare LPAs are integral to ensuring that the health of those who have lost capacity is safeguarded in the best way possible, and the individual's wishes are respected. Health and Welfare LPAs can only be made when you have mental capacity and only become valid when capacity is lost. You can decide whether or not you want your chosen attorney(s) to be able to make decisions about life-sustaining treatment on your behalf. As such, it is wise to discuss your plans with your GP. This is particularly relevant if you have any specific medical conditions or healthcare needs. It is also sensible to involve your family in your plans, or at least make them aware, not least so that any provision you have made is to hand if and when needed.

Property and Financial Affairs LPAs

Property and Financial Affairs LPAs give a person or persons of your choice power to deal with your financial affairs if you become unable to do so, for example due to loss of mental capacity, illness or accident. Whilst you can only make the LPA when you have capacity, it is valid as soon as you make it, so can be used immediately if desired. Your attorney will be able to make decisions regarding the management of your money and assets including paying bills, accessing your bank accounts, managing your investments and/or property on your behalf. The LPA may never be needed but is vital if it is.

One in ten people say caring for ill parents is a priority when planning for the future

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It is possible to make arrangements for someone to look after your assets, financial affairs and health and welfare, either now or in the future if for any reason you are unable to do so personally.

Business interests

An LPA is likely to be sufficient to deal with day-to-day business administration but cannot necessarily be used to deal with more specific business interests. An LPA will not allow an attorney to act in the role of director or trustee in a business. Directors should therefore consider what would happen in the event of a loss of mental capacity. The company's Articles of Association could be amended to set out a procedure to cover this or appoint additional directors in the case of a sole director. Under the Trustee Act 1925, a trustee's responsibilities can only be delegated by a special Power of Attorney.

In the case of a partnership, the partnership agreement should be reviewed to check if there are any restrictions on having an attorney act. If there is no agreement, the Partnership Act 1890 applies. In this case, a partner can apply for an order that the partnership was dissolved on the date that one partner became incapable of performing their part of the partnership contract.

Message in a bottle

An informal document, but one that could prove critical, the concept of having a message in a bottle is simple. It is advised that if mental capacity is lost, an individual has a Lions emergency bottle with basic information, medical details and emergency contact details written on a piece of paper inside. If the emergency services are called to the home, they will automatically check the fridge for the bottle if they see the sticker on the inside of the front door or on the outside of your fridge.

Lions Message in a Bottle is free, and anybody can get one through their GP, local pharmacy or local Lions club.

Making applications to the Court of Protection

The Court of Protection deals with the affairs of those who lack the mental capacity to do so themselves. If an individual doesn't have an LPA and becomes unable to make decisions, the Court of Protection will appoint a Deputy to act on their behalf. This is not limited to the elderly. A disabled child or a vulnerable adult, unable to make an LPA, may need the Court to appoint a Deputy on their behalf. Although this is often a family member, sometimes there is no-one suitable to act, or those who are suitable may not agree. In these cases, appointing a professional Deputy can be the right approach.

Applications to the Court of Protection can be complex. It is necessary to demonstrate that the person concerned does not have capacity and that the order sought is in that person's best interests. Once a Deputy has been appointed, there is an annual obligation to submit a return detailing expenditure and income. As with LPAs, the Court would need to be involved in the event that gifts were to be made, even for Inheritance Tax planning. A special process would need to be followed to put a Will in place, known as a 'Statutory Will' for someone lacking capacity.

Blake Morgan Life Stages series

Blake Morgan presents a series of reports that examine the life stages of successful individuals and entrepreneurs and shine a light on the complexities of modern life.

Blake Morgan's Private Client team

Blake Morgan's Private Client division has considerable experience in advising high net-worth individuals, entrepreneurs, business owners and families who require advice on succession and tax, residential property or sensitive family issues.

We offer a wide range of traditional private client services, including niche offerings such as succession planning, wealth preservation, mental capacity, cross-border and UK/US tax planning, high value residential conveyancing and leasehold enfranchisement advice. Our family team include an accredited mediator and collaboratively trained lawyers.

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