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Family Law

Family Law News & Views



Pet Prenups!

We have all heard of pre-nuptial agreements, pre-marital agreements or pre-Civil Partnership agreements. Couples make an agreement deciding what happens to the house, furniture, bank accounts, cars, etc if the relationship fails. Although not strictly followed in this country in the same way as the USA or other countries, Courts are taking notice and following the terms of pre-nuptial agreements if possible.

What about the family dog, cat, goldfish or other pets? How do you or the Court decide where they live? Is it the same as dealing with the children?

In divorce or relationship breakdown, pets are dealt with in the same way as personal belongings. They are 'chattels'. I know it sounds awful, but legally they are no different than the sofa or a painting.

Although dearly loved by the family and part of the family, there is no law of 'custody of pets'. Couples can argue about who keeps the family pet in the same way that they argue over who keeps the dinner service or the television. It can be an expensive process, and one as emotional as dealing with where the children live.

In some cases, if couples cannot agree, the animals are re-homed or given to animal shelters.

So, what can we do to avoid the cost and emotional turmoil of what happens to Fluffy or Lassie or Nemo when couples split?

As pre-nuptial agreements are becoming more common in this country to deal with financial matters, we are following the lead of our friends in the USA and including pets in the agreement. Couples can decide who would take the pets should the relationship fail. Should custody be shared and if so how? Does the family dog spend one week with one person and the next with the other? Who pays for vet bills, insurance, food and other expenses? If there are two cats, is that one each or should the cats stay together?

Such agreements are not just for those who marry, unmarried couples can include their pets in living together or cohabitation agreements.

The sad case of William and Kate

Let me tell you about William and Kate. They were not married, but had lived together for 20 years. They kept their finances separate and did not have joint accounts, mainly for tax purposes. Kate was divorced and had 3 grown-up children from her previous marriage. Sadly, Kate died without making a Will. Her money and belongings were shared equally between her children and William received nothing.

Why? It's very simple. if you do not make a Will, your assets do not necessary go to those who you may have wanted to benefit. This is particularly important if you are not married.

If you are unmarried and do not leave a Will, your partner receives nothing. So, if you want your partner to benefit, now is the time to make a Will.

Even if you are married, your spouse/Civil Partner does not necessarily receive everything. If your estate is worth less than £250,000, then yes, your spouse gets it all. However, if your estate is worth more than £250,000, your spouse receives the first £250,000, your personal belongings and a 'life interest' in half of the rest. The remaining half passes equally to your children at age 18.

A 'life interest' means that your spouse can have the use of the asset and receive interest on investments, but does not have the benefit outright.

If you are married, do not have children and your estate is worth more than £450,000, your spouse receives the first £450,000, your personal belongings and a life interest in half of the rest. The other half goes to your parents, or if your parents have died to your brothers and sisters.

If you are not married, your estate would pass equally to your children. If you do not have children, your estate is passed equally to your parents. If your parents have died, it passes equally to your brothers and sisters, and so on working through your half-brothers and sisters, grandparents and aunts and uncles.

If you have no relatives, your estate goes to the Crown.

Dealing with an estate where there is no Will is complicated, time-consuming and expensive for those you leave behind. It is far easier if you make a Will and clearly define who receives what and when.

Even if you have made a Will, is it out of date?

Have you married since making a Will? If yes, it will not be valid.

Have you had children since making your Will but it does not mention children?

Are you divorced but have not changed your Will?

If the answer is Yes to any of these questions, it is time to make a Will or review your existing Will.

Finally, If you own something jointly with another person, they will automatically receive it upon your death by 'survivorship', regardless of any Will or intestacy rules. So, if you have a joint bank account, the account will pass to the joint account holder. If you jointly own a property, it MAY pass automatically to the other owner(s). This depends on the terms of ownership and will be the subject of another newsletter. Watch this space!



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