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## Welcome

to the latest edition of Family Focus.

This month we are looking at some of the most frequently asked questions surrounding the topic of family law, such as “My fiancée wants us to sign a prenuptial agreement before we marry, will it be legally binding?” and “If we get divorced don’t we just split our assets 50:50?”

We hope that you find our FAQs useful and if you have any other specific questions on family law please don’t hesitate to get in touch. We are happy to have an initial discussion regarding your situation free of charge, so if you are interested in doing so feel free to give me a call or quick email using my contact details below.

Kind regards,

*Robin Charrot*

Head of the Family team

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## Family Law FAQs

Following a large number of recent enquiries we thought it would be useful to share some common questions (and our answers) on family law.

**Q: My fiancée wants us to sign a pre-nuptial agreement before we get married. Will it be legally binding?**

**A:** Yes, if it is done in the right way. What we mean by this is that:

- Both of you must enter into the agreement of your own free will;
- Both of you must understand the implications of the agreement; and
- The agreement is not obviously unfair.

It is important to get an expert view of what is or isn’t ‘obviously unfair’. It is also very

important that the agreement allows for future changes in circumstances, particularly the possibility of having children.

**Q: I have lived with my partner for five years. Is she my common law wife?**

**A:** There is no such thing as a common law wife. If you live with your partner but are not married and don’t have children together, the only financial claims either of you may have will be in relation to any properties which either of you own. Those claims will be decided based on how you both dealt with each

*(continued overleaf)*



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property during your entire relationship. It is very complicated. The Government's plans to increase the rights and benefits of cohabitants on separation have been put on hold indefinitely. If you have children together, there will be maintenance payable for them. If the paying parent has quite a lot of money, the parent looking after the children may have further financial claims, for example to pay for a car, or a nanny, or private school, or perhaps even a house for them and the children to live in until the children are no longer financially dependent.

**Q: I have been married for six months. Can I get divorced?**

A: No. You can't start divorce proceedings (for any reason) until after you have been married for one year. However, that should not stop you from getting legal advice and working out who is going to divorce whom, and how to divide the finances.

**Q: Can I get a "quickie" no blame divorce?**

A: Unfortunately, there is no such thing. If you haven't been living apart for two years or more, the only way to divorce is for one of you to 'blame' the other for the breakdown of the marriage (adultery or unreasonable behaviour). If you do that, a divorce can be concluded in approximately five - six months.

**Q: How much does it cost to get divorced?**

A: As long as it is not defended, divorce follows a fixed process and it is quite easy to predict how much it will cost. At George Davies we are able to offer a fixed fee of £600 + VAT + court fees for a straightforward, undefended divorce.

**Q: Will I have to go to court to get divorced?**

A: If the divorce is undefended, there is no need for you to attend court. Everything can be done by post. However, if you can't sort out satisfactory arrangements regarding your

children, or you can't agree on how to divide the finances, it may be necessary to start separate court proceedings, and if you do, you will need to attend court for this. It is usually better if you can reach agreement without going to court. There are a number of different routes which can be taken to avoid court, such as mediation, collaborative law or solicitor negotiation. It is important to select the right route at the beginning of the case, so that you don't waste time and money. We always go through the pros and cons of each route at a free initial meeting.

**Q: If we divorce don't we just split our assets 50:50?**

A: This is unlikely. Although the equal division of assets is a starting point, there are many factors taken into account by the Courts which usually produce a different result. If there is not enough money to go around when the couple split, the key factor is how to meet the couple's respective financial needs, and particularly the financial needs of the children. This usually results in an unequal division of assets in favour of the parent with whom the children are living.

If there is more than enough money to go around, a whole host of other factors come into play. For example, if the marriage is short, the correct result might be to put the parties back into the financial positions they were in before the marriage. Even with longer marriages, the court can be persuaded that the division of assets should be influenced by the amount of money that each party 'brought' to the marriage. Financial injections from either person's family (e.g. inheritances) can also alter the result. The stay at home parent could be 'compensated' for giving up their career. In other situations, one person can get more than half of the assets if their 'genius' created most of the wealth. Sometimes, changes in wealth after separation can have an important effect.

Another key factor is whether or not there is a maintenance claim by one of the couple. If there is, this could be dealt with separately

to the division of assets. Alternatively, that person's maintenance claim could be 'bought off' by getting a bigger share of the assets. The right answer on how to split a family's money will be different for every single family. The most important thing is to get early advice on the range of possible outcomes, the different methods of resolving any dispute (mediation, Collaborative Law, solicitor negotiation, court proceedings), and the costs, timescale and risks involved for each method. This is what we will always aim to give at an initial meeting.

**Q: My wife has had an affair. Will I get a better result as she has behaved badly?**

A: No! The best you will get is that she may have to pay the legal costs of the divorce, which are not very high. If your wife is planning on living with or marrying her new partner, and he/she is fairly wealthy, this could have an impact on the division of assets or income.

**Q: I am not sure whether I am getting the right legal advice. What can I do?**

A: If, for example, you were not sure about any medical advice you had received, then you would get a second opinion. The breakdown of your relationship and the financial and personal consequences of that is one of the most important events in your life, and you should always get a second opinion. We are always happy to provide a free second opinion.

*For further information please contact one of our family law specialists using the details overleaf.*

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