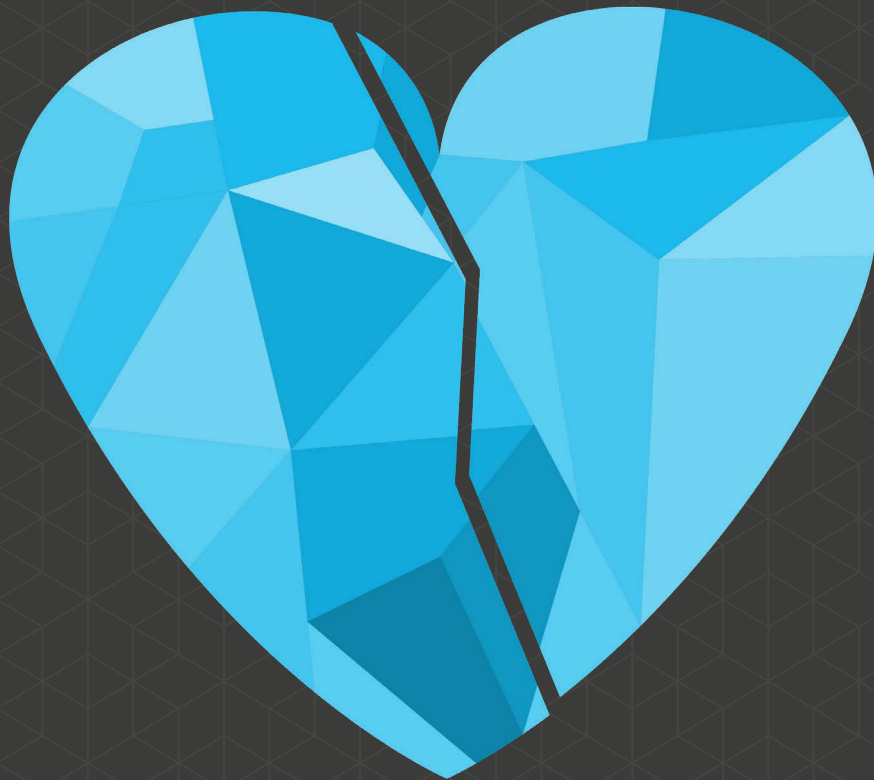




A GUIDE TO DIVORCE



WHAT YOU NEED TO KNOW TO
MAKE THE BEST DECISIONS FOR
YOU AND YOUR FAMILY

By Julia Drury BA Hons and Richard Rodway LLB Hons

INCLUDED IN THIS GUIDE:

- Why you need to have a plan based on all the information available
- The difference between separation and divorce
- The divorce process explained
- How 'no fault divorce' has ended the blame game
- What to consider in financial settlements
- Arrangements for children



DON'T LET YOUR DIVORCE SET YOU BACK...

Talk to the experts, make a plan, and move forward

When a marriage breaks down, decisions have to be made which will have huge, wide-ranging and long-term emotional and financial consequences. Therefore, it is important to ensure that you make well-informed decisions for you and your family.

You need to ensure that you have thought of everything based on all the information available and that any agreement entered into is fair, binding and doesn't leave any chance of nasty surprises in the future. This is best achieved by having an agreement ratified and enshrined in an order of the Court as part of divorce proceeding. If you both agree on matters, no one will actually have to attend Court.

WE CAN HELP

Our understanding of what you are going through; the process, and our experience of the all of the factors that need to be considered means we can help you get right solution for you and your family.

Whilst you may think 'I can't afford to use lawyers' the question should perhaps be 'can I afford not to?'

Legal costs vary based on the facts and complexity of each case but after an initial consultation we can provide you, with no obligation, an idea of the costs that would be involved. We can also point you in the direction of funding options as there are firms that specialise in providing loans in divorce cases to cover legal costs.

The important thing is that you need a plan, and we can give you that.

Areas covered in this guide:

- The difference between separation and divorce and why it matters
- How 'no fault divorce' has ended the blame game
- What is the divorce process?
- Financial settlements – make sure you get what you are entitled to
- Children – important considerations for contact and arrangements

This guide by no means covers everything you ought to consider when separating or divorcing and should not be considered a substitute for legal advice but it can hopefully help you understand some of the factors that should always be considered.



**WHILST YOU MAY THINK
'I CAN'T AFFORD TO USE
LAWYERS' THE QUESTION
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'CAN I AFFORD NOT TO?'**

EVEN IF YOU'VE AGREED EVERYTHING...

You could be left exposed if things are not formally and properly documented

A divorce is a difficult time for all those involved and issues relating to shared assets and ongoing financial arrangements are probably one of the most complex aspects of any relationship breakdown. The Court will only deal with financial matters as part of a divorce if it is asked to.

When a marriage ends it is sensible for the couple to formally resolve, once and for all, the outstanding financial matters between them. In England and Wales, even after a divorce is complete, unless and until a spouse remarries, they can still bring a financial claim against their former spouse, potentially many years after the divorce has been finalised, unless a financial settlement has been reached, and enshrined in an Order of the Court by consent.

In the famous case of *Vince v Wyatt*, a couple on state benefits divorced after just two years of marriage. They did not sort out any financial agreement when they divorced. Some 27 years later their circumstances were dramatically different. Mr Vince ran a multimillion-pound wind power company whereas Mrs Wyatt still lived 'hand to mouth'. Mrs Wyatt applied for a financial order, and despite their relationship ending almost 3 decades earlier and under very different circumstances, she was awarded £300,000.

If Mr Vince had formalised financial matters when they divorced, he would have saved himself an expensive Court case and a significant lump sum.

Where financial matters are agreed, this will be dealt with as a paper (or online) process, and no one need attend Court. It will give each party the security and certainty of knowing that any financial agreement reached will be binding and enforceable after the divorce.

There are many issues to consider when separating finances on divorce and matters that make matters more complicated include:

- One or both spouses own a business
- One spouse is financially dependent on the other
- One spouse does not agree to the divorce
- There are dependent children to consider
- One spouse has an issue which affects their ability to earn an income



WHEN A MARRIAGE ENDS IT IS SENSIBLE FOR THE COUPLE TO FORMALLY RESOLVE, ONCE AND FOR ALL, THE OUTSTANDING FINANCIAL MATTERS BETWEEN THEM.

- There is a disparity in assets e.g. one has more property in their name or a larger pension pot
- There are complex assets, potentially outside the UK, or which are subject to third party interests
- There is a concern over one spouse dissipating or concealing assets / income

If a divorcing couple can reach an agreement on the division of assets and financial provision, they can invite the Court to make a Consent Order, enshrining that agreement. If an agreement cannot be reached, then either party can apply to the Court to have the Court decide upon the terms of and impose a settlement on the parties. This application for a “Financial Remedy” can take several months and normally a minimum of 2 Court hearings, although it is open to the parties to settle and agree to the terms of a Consent Order at any point.



WHERE THE PARTIES CAN AGREE TERMS OF SETTLEMENT, THEY CAN BE MORE CREATIVE AS TO THE TERMS OF THE SETTLEMENT AND COURT ORDER.

Where the parties can agree terms of settlement, they can be more creative as to the terms of the settlement and Court Order. The Court will not approve and make an Order in the agreed terms if it does not consider that the Order is fair.

HOW WE CAN HELP

We have extensive experience in dealing with the financial consequences of divorce, can help you with the protection and distribution of jointly owned assets, and adopt a realistic approach to achieve a speedy and cost-effective resolution of financial issues.

We aim to achieve the best possible result for our clients and settle finance issues without the need to go to Court but where this is not possible, we have a successful track record in taking tough action in Court proceedings.

WHAT IS THE DIFFERENCE BETWEEN DIVORCE AND SEPARATION?

A married couple may not feel ready or able to go through with a divorce, for example because of religious beliefs, but they want to separate and take some steps to protect their respective interests, and formalise matters between them to provide some degree of certainty and stability.

Unlike divorce, a legal separation does not put an end to the marriage. It's important to understand the differences between the two, as it can help you choose the right option for your individual circumstances.

The main differences between a divorce and a legal separation are:

- A divorce legally ends a marriage, but a legal separation does not
- You can marry other people after getting a divorce, but not after a legal separation
- You have to prove that your marriage has irretrievably broken down to get divorced, but you don't have to with a separation
- You can get a separation at any point, but with a divorce you must wait until you've been married for at least one year
- The Court cannot exercise its powers to divide a pension pot with a separation, which it can with a divorce.

The couple could enter into a Separation Agreement, to address an array of issues, for example:

- division of assets and debts
- spousal support
- child arrangements and support

with a term of the agreement being that if and when divorce proceedings are commenced in the future, the parties will simply invite the Court to make a financial Order consistent with the terms of the Separation Agreement.

Whilst a Separation Agreement will not bind the Court in the event of a dispute arising in divorce proceedings at a later date, the Separation Agreement is something that the District Judge would have regard to in determining that dispute, and hence why it is important to get legal advice when drafting a separation agreement.

Where a couple are not married, a Separation Agreement, if entered into properly, would provide for a binding contract between them. However, it is important to understand that if circumstances dramatically change after signing a Separation Agreement, a Court may not feel able to uphold the provisions if they are fundamentally unfair in light of the different circumstances.

HOW WE CAN HELP

If you would like more information in respect of the separation process to decide if it is right for you, our family team can provide advice on how to protect your interests.

HOW 'NO FAULT DIVORCE' HAS ENDED THE BLAME GAME

Historically, when seeking a divorce, you had to satisfy a Court that your marriage has irretrievably broken down by relying on one of the five "facts" as grounds for divorce e.g., adultery, unreasonable behaviour, desertion, two/five years separation. The Petitioner had to allege fault and blame.

However, 'No fault divorce', officially named the Divorce, Dissolution and Separation Act 2020 came into force on 6th April 2022, at the same time changing the laws governing the dissolution of a civil partnership.

Under this legislation, divorcing couples can now simply agree to a divorce, without assigning blame or fault. Indeed, it is now not possible to apportion blame for the marriage breaking down. Parties can choose between them whether to make a Sole Application for divorce or a Joint Application, in which both parties agree to divorce each other.

Justice secretary Robert Buckland has said of the new legislation "by sparing individuals the need to play the blame game, we are stripping out the needless antagonism this creates so families can better move on with their lives."

It is hoped that by introducing no fault divorce, the divorce process will become more straightforward. The new legislation will also remove the possibility of contesting a divorce or the parties arguing over who should pay the costs of the proceedings.



...DIVORCING COUPLES CAN NOW SIMPLY AGREE TO A DIVORCE, WITHOUT ASSIGNING BLAME OR FAULT.

The government has introduced online divorce to streamline the process of people obtaining a divorce themselves, without the need to instruct solicitors. If you are thinking of doing this, we recommend that you still come and speak to a solicitor in relation to financial matters before applying for the Final Divorce Order. This is because, upon pronouncement of the Final Divorce Order, you may lose out on state benefits, pension benefits, and any matrimonial restriction on the family home will cease. Similarly, if you win the lottery, have a windfall or receive an inheritance, your ex-partner may make try to make a claim over this.

HOW WE CAN HELP

We can discuss options and strategy with you to ensure that you make the best and informed decision as to next steps and go into everything with your eyes open.

WHAT IS THE DIVORCE PROCESS?

A divorce application is sent to the Court through an online portal. If it is a Sole Application for divorce, the application can be lodged straight away by the applicant. If it is a Joint Application for divorce, both parties will need to confirm receipt of the other's Application.

Once the divorce application, the original marriage certificate and the Court fee have been filed with the Court online, the "Applicant" (in a Sole Application) receives confirmation once the Court has issued the divorce and the proceedings sent to the Respondent. The Respondent receives an email telling them to complete an Acknowledgement of Service form which is done online, within a specified timeframe.

The Court will notify the Applicant once the Acknowledgement of Service form has been completed by the Respondent. The Applicant cannot apply for the "Conditional Order" (formerly "Decree Nisi") until 20 weeks has elapsed from the divorce application having been made. There is a further delay of six weeks from the date of the Conditional Order before the Applicant(s) can apply for the Final Divorce Order (formerly "Decree Absolute") which concludes the proceedings.

The entire process is conducted via the online portal and neither party will need to attend a Court hearing.

In terms of costs, the Court will not make any orders and therefore it is sensible to try and agree how the Court fee (currently £593) will be divided before the application is submitted.

It may well be advisable to postpone applying for the Final Divorce Order if, for example, financial matters have not by then been resolved and formalised. The parties' spousal entitlements upon the death of the other cease to apply when the divorce has been concluded.

Remember that if you go through the process of 'divorce', and nothing more, then whilst you will be divorced, you could be left exposed for the future. If you do not resolve financial matters during the divorce process, by way of a legally binding Court order, then your claims against each other remain open for income, capital and pensions and either of you may apply to the Court in the future for a financial order.

It is important to formally tie up financial matters between you, and have an agreement enshrined in a Consent Order as if either of you has a change in circumstances, you may find that the other feels differently about how the finances have been divided at the time of the divorce.

In the absence of an Order, unless and until a party remarries, their financial claims against their ex-spouse arising from the marriage remain live, and they could bring a claim for financial relief and claim some of your wealth in future, even many years after you were divorced.

HOW WE CAN HELP

For a confidential discussion about the divorce procedure, please contact our Family law solicitors who will be happy to have a conversation with you about how we can support you and your family. We can support and guide you through the process and find the divorce route which is best for you.

IT IS IMPORTANT NOT TO OVERLOOK PENSIONS

Whilst a lot of attention might be on the family home and bank accounts during a divorce, pension savings can often be overlooked, even though for many they represent one of their largest assets.

A report by Scottish Widows showed that three quarters of divorcing spouses did not discuss pensions when reaching a financial settlement. This lack of discussion disproportionately affects women, with wives estimating to be missing out of a staggering £5 billion in settlements arising from pension sharing each year.



YOU COULD BE ENTITLED TO A PORTION OF YOUR EX-SPOUSE'S PENSION IF YOU HAVEN'T HAD THE OPPORTUNITY TO SAVE YOURSELF.

It's hard to ascertain why pensions do not come into many divorce discussions but it may be because they are viewed as 'invisible finances' locked away for the future or that many may not be aware that pensions can be divided on divorce. The average couple's pension pot is worth over £100,000 and not considering these finances negotiating a divorce agreement could put one party at an unfair disadvantage when approaching retirement age. If the split happens later in life, an individual will have less time to rebuild their savings and may have to put their retirement plans on hold for longer.

You could be entitled to a portion of your ex-spouse's pension if you haven't had the opportunity to save yourself. Or if you've been paying into a pension while your spouse has taken a career break, they could be entitled to a portion of yours. The starting point in any case is an equal division of the available assets, and this extends to pension assets.

The grounds for divorce used to obtain a divorce generally have no bearing on financial settlements. The Court will ultimately decide what is a fair solution and it is not a case of "what you are entitled to". The factors which the Court will consider are set out at section 25 of the Matrimonial Causes Act 1975.

Should there be concerns about the other party disposing of assets before a judgment can be obtained, we are experienced in emergency arrangements to protect assets, such as issuing a freezing injunction.

It is important to note that a divorce revokes existing Wills and ends automatic inheritances between spouses, so divorcing couples should review their Wills or make one if they do not have one.

HOW WE CAN HELP

If you have any questions regarding pension sharing on divorce, we would be happy to help you. We also work with pension experts who can advise so that you get the right deal and solution in place.

CHILD ARRANGEMENTS

Should your relationship breakdown and you have a family we can advise on the best course of action to try and reach an agreement with the other parent regarding child arrangements or other issues relating to the child(ren). If an agreement cannot be reached between the parents, we will suggest that mediation is attempted, which is a requirement before Court proceedings can be issued. If mediation is not successful, then there may be no choice but to seek the assistance of the Court by making a formal application.

The welfare of the child(ren) is the most paramount concern for a Court when considering what would be an appropriate arrangement between the parents. Settlement is encouraged at every stage of the proceedings and it would be as a last resort that the Court would impose arrangements upon parents. This will only happen in circumstances when the parents really cannot agree between themselves.

Every application that is made to Court in relation to a child is referred to CAFCASS (Child and Family Court Advisory and Support Service) who will undertake required safeguarding checks with both the police and children's services ahead of the first hearing. CAFCASS will provide a Safeguarding Letter to both the Court and the parents before the first hearing and this sets out recommendations as to how the case should progress.

The first hearing will take place approximately 4-6 weeks after the Court receives the application and both mediation and CAFCASS will be present during the hearing to try and help the parties reach an agreement if at all possible.

If no agreement can be reached and a final hearing is listed, the Court will require that both parties file their written evidence beforehand. A final decision is made taking into account the welfare checklist which can be found at section 1(3) of the Children Act 1989:

- The ascertainable wishes and feelings of the child concerned (considered in light of the child's age and level of understanding)
- The child's physical, emotional and educational needs
- The likely effect on the child if circumstances changed as a result of the Court's decision
- The child's age, sex, background and any characteristics of the child which the Court considers relevant
- Any harm which the child has suffered or is at risk of suffering;
- How capable each of the child's parents (and any other person in relation to whom the Court considers the question to be relevant) is of meeting the child's needs
- The range of powers available to the Court in the proceedings in question

The Court is able to make determination in relation to a wide-range of issues in respect of a child in relation to which the parents cannot agree, for example, with whom the child is to live, how often and for how long they should spend time with each parent, where the child should attend school, whether the child should receive specific medical treatment etc.

The most common application is for a "Child Arrangements Order" (formerly Residence and Contact/Custody and Access), which asks the Court to determine what the arrangements for the child should be in terms of spending time with each parent.

HOW WE CAN HELP

We can advise on child arrangements and financial support including claims via the Child Maintenance Service. Whether you are seeking our advice to reach an agreement with the other parent or find yourself making or defending a Court application, we can help.

WHY THP SOLICITORS

We have expertise in all areas of family law

- **Separation**
- **Divorce**
- **Civil Partnerships**
- **Matrimonial Finances**
- **Cohabitation Agreements and Disputes**
- **Pre- and Post-Nuptial Agreements**
- **Child Contact and Arrangements**
- **Parentally Responsibility Issues**
- **Domestic Violence prosecution**

Our Family & Divorce solicitors provide sensitive and practical solutions, whether it is a marriage, civil partnership or an unmarried couple, to help both parties to move on with minimum animosity.

WHY THP SOLICITORS

Every case we deal with is handled by a highly qualified family lawyer, some of whom are trained in collaborative law, and our family team includes members of:

- **Resolution (formerly the Solicitors Family Law Association)**
- **Law Society's Family Law Accreditation Scheme**
- **Law Society's Children Law Accreditation Scheme**

This gives you the choice of being represented by lawyers with different areas of specialism, seniority and personality.

At THP Solicitors, we take every care to help our clients minimise conflict, protect their family and start to regain control of their lives. Central to our approach is our long and valuable experience in collaborative practice. This way of working helps everyone to focus on the overall needs of the family, and to achieve a negotiated agreement outside of the Courts where possible.



RICHARD RODWAY

Partner & Head of Divorce & Family Team

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Richard has over 20 years of experience, specialising in all areas and issues arising on divorce or separation, whether married or non-married couples, financial and property matters, child arrangements and domestic violence protections, as well as pre-nuptial, post nuptial and cohabitation agreements.

A Resolution trained Collaborative lawyer, Richard is experienced in dealing with high net worth financial remedy cases, with complex asset portfolios including family businesses, third party interests, hidden and overseas assets, and complicated children cases with issues of welfare concerns, domestic violence, and international elements, including child abduction and removal from the jurisdiction.

He is known for being approachable and accessible, with a no-nonsense approach to cases, providing clear, pragmatic and robust advice. Always endeavouring to find the best solution for his clients, and a creative solution, with a minimum of fuss and acrimony, recognising also that, whilst a marriage may be coming to an end, the family will continue where there are children from the marriage, with both parties having to be able to effectively co-operate and co-parent post-divorce.



JULIA DRURY

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Julia recognises that clients need a solicitor who is approachable and calm, but above all who will be tenacious on their behalf. She believes that it is vital for clients to have a full understanding of the processes involved in their specific case and will always ensure that the law is accessible to them.

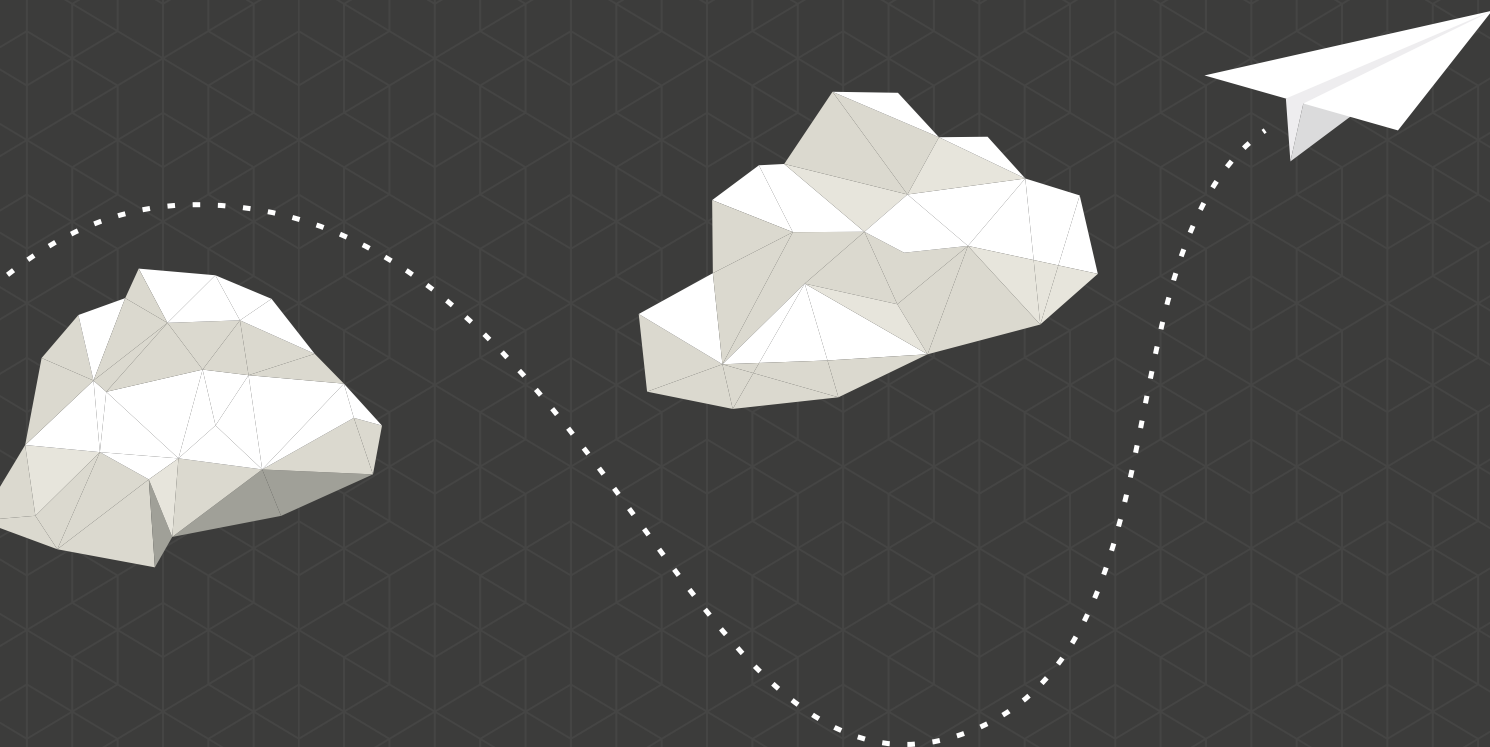
Julia will look at your case from every angle to make sure that all bases are covered when considering a solution and, if children are involved, will treat them as the priority. Julia deals with all aspects of family law, including divorce, separation, financial disputes (for both married and unmarried couples), preparing pre- and post- nuptial agreements and varying existing orders. She also frequently acts for mothers, fathers and grandparents in proceedings relating to children.

Julia is a committed member of Resolution and is a Resolution-trained Collaborative Lawyer. She is also accredited by the Law Society as a Family Law Specialist, which recognises that she maintains a high level of knowledge, skill, experience and practice in this area of law.



CONTACT US TODAY

WE CAN SUPPORT AND GUIDE YOU THROUGH THE LEGAL PROCESS AND FIND THE ROUTE WHICH IS BEST FOR YOU.



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The information provided in this guide should not be relied upon in substitution for obtaining professional legal advice and it is essential that you verify all information with us before taking any action in reliance upon it. It is a condition of us allowing you to have free access to this guide that you accept that we will not be liable for any action that you take in reliance upon it.