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Legally Speaking - Judge & Priestley's Quarterly Legal Update for Private Clients

SPRING
2017

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Welcome to J & P's latest newsletter, specially designed to keep you up to date with all the latest legal developments affecting you and your family.

Got something on your mind? ... give us a call or email us.

For more than 125 years we have been providing clients with expert and professional legal advice. We understand the value of a personal and friendly service.

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Judge & Priestley Expand Private Client Team with the Acquisition of Preston Mellor Harrison

We are delighted to announce we have acquired Chislehurst firm Preston Mellor Harrison with effect from 8th May 2017.

Steven Taylor, Managing Partner, commented "For some time we have been looking to continue expanding our business. We saw this as a great opportunity as it coincides with our growth plan and our ambition to expand geographically into the Chislehurst region. The acquisition will enable us to provide a greater range of legal services to the community of Chislehurst and Kent borders."

From now on the current office of Preston Mellor Harrison at 30 High Street, Chislehurst will continue to trade under the Judge & Priestley name. The office is now closed for refurbishments to be undertaken and will re-open in June.

Preston Mellor Harrison primarily deal with Wills, Probate and Residential Conveyancing and the work currently undertaken at the Chislehurst office will be transferred to and undertaken at the Head Office of Judge & Priestley in central Bromley. It is intended that the remaining administration and support staff will relocate to Bromley.

Steven Taylor, David Chandra, Mark Younger, Robert Davis and Jackie Monk from Judge & Priestley Solicitors with John Harrison and Janet Meisner from Preston Mellor Harrison in Chislehurst

For any queries relating to the acquisition please contact David Chandra on 0208 290 7348 or email dchandra@judge-priestley.co.uk

Husband ordered to pay divorced wife an extra £1.6m

Family Law

A husband who failed to disclose all his assets when negotiating a divorce settlement has been ordered to pay his wife an extra £1.6m.

The couple were both teachers when they married in 1984. The husband began a business in 1988. He owned 99 of the 100 shares and his wife had the other one.

He stopped teaching in 1990 to concentrate on the company, while the wife continued teaching and helped in the business.

They had three children by the time they separated in 2002. The husband moved out of the family home and she took no further part in the business.

In 2006, the husband paid the wife £150,000 following their divorce, but she did not sign the deed of settlement that had been drafted.

A meeting conducted by a solicitor who had previously acted for the husband recorded that the wife's acceptance of the proposed deal was conditional on full disclosure. In 2013, she applied for a financial remedy order.

The judge concluded that there had been no full and final settlement, and that the husband had not provided the wife with full disclosure. The husband was ordered to pay her a lump sum of £1.6m and to transfer 25% of his pension policies and shares to her.

That decision has been upheld by the Court of Appeal. It said it was beyond argument that the wife had a valid claim.

The two parties had made equal contributions to the marriage before separation and the wife had played an important role in the business during its infancy.

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Most people prefer a solicitor to write their will

More than 6 out of 10 people prefer to have a qualified solicitor to write their will so they can be confident that it's done properly, according to new research.

A survey carried out by Will Aid, the organisation that encourages people to leave some of their estate to charity, found that 62% of people who made a will in 2015 used the services of a solicitor.

This compared with only 12% who used an unregulated will writer, 9% who made a homemade will and 17% who used DIY kits or banks and other services.

Will Aid says many people are unaware that will writers can practise without having proper training, regulation or insurance.

Peter de Vena Franks, campaign director, of Will Aid, said: "Drawing up a will is a vital financial planning step but the lure of the cheaper alternatives to solicitors can mean the document is not properly written or legally binding.

"While an off-the-shelf will might seem attractive to those who are watching the pennies, it could be money wasted rather than saved.

"It is evident that the public prefer to use a solicitor to write their will, wherever possible. They are aware that with a solicitor you can be assured of a valid will and if anything does go wrong there is proper insurance and redress. This may not be the case with an unregulated provider and certainly isn't the case if you write your own will."

The Law Society has also urged people to make a will and ensure that they only use a fully qualified solicitor. A spokesman said: "A badly drafted will can cause more problems than no will at all, so the Law Society advises against using unregulated will writers. All solicitors are subject to strict

regulation to ensure that they deliver the best service to their clients, unlike unregulated will writers.

"Solicitors are unparalleled in the will writing market as only they have the breadth of training to consider wider implications and complex issues, including tax and family law."

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Mother loses appeal over her son living with his father

A mother has lost her appeal against a court ruling that her son should live with his father.

The case involved a couple who had separated on bad terms having had four children together.

The older three children lived with the mother and the fourth child, who was five, lived with the father.

The judge had been involved in many hearings in relation to the family and had made findings that the mother's conduct alienated the children from their father and made them hostile to the idea of having contact with him.

A consultant psychiatrist had been instructed to assist the family.

The mother had not changed her behaviour and the judge found that she had recruited the three older children to lie about their father.

He found that she had caused emotional harm to all her children and that they should all go to live with the father, but recognised that such a move would not be possible given their entrenched views. He ordered a transfer of the residence of the third child to the father. The older two children remained with the mother.

The Court of Appeal has upheld that decision. It held that the judge had presided over many hearings in relation to the family and made damning findings in relation to the mother.

He had noted that the father was committed to the children's best interests but that the mother was not.

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Man must pay £44,000 in dispute over stepfather's will

A man has been told he must pay costs of £44,000 because of his unreasonable behaviour in a family dispute over his stepfather's will.

The case involved the stepson and the stepfather's daughter and son. The stepson had looked after the father's finances in the last 12 months of his life.

Following the father's death, the daughter discovered that the estate was far less valuable than she had anticipated. She issued proceedings to determine who should represent the estate and to seek an account of the money that she suspected was missing.

A personal representative was appointed, to whom the stepson was required to give all documents and records relating to the father's financial affairs. However, he failed to deliver the relevant documents.

After the court made a disclosure order against him, the stepson went on to disclose a number of documents in a piecemeal fashion over a number of months.

The daughter applied in August 2016 for the stepson to be committed but it was not pursued on the day of the hearing in January 2017 as it was accepted that he had substantially complied with the disclosure order by then.

However, the daughter wanted him to pay the costs of the committal application, which were £44,761.20.

The court found in the daughter's favour. It held that the stepson had not wished to cooperate and had dragged his feet. He had not behaved reasonably and it was appropriate to assess costs at £44,761.20.

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Rights for cohabiting couples is ‘long overdue’

Leading family lawyers are calling on the government to provide new legislation to protect the rights of cohabiting couples.

The latest figures from the Office of National Statistics show that there were 3.3 million cohabiting couple families in the UK in 2016, more than double the number recorded in 1996. They are now the fastest growing family type.

In spite of this, cohabiting couples have very few automatic rights to protect them if their relationship breaks down. The family law group Resolution says a new legal framework for rights and responsibilities should be introduced.

It has conducted a survey that found that 98% of cohabitants thought they have the same legal rights as married couples. This is not the case.

A Resolution spokesperson said: “The law doesn't give people in this type of relationship any meaningful legal protection if they separate or if one of them dies.

“Even if one partner has given up work to care for children, or has contributed by supporting their partner in their career by running the home, often their contributions will not be recognised in law, especially if the children have already grown up and left home.”

Resolution wants to see a law that gives cohabitants protection if they meet certain criteria showing that they were in a committed relationship. They would then have the right to apply for financial orders if they separate. This right would be automatic unless couples choose to opt out.

The chairman of Resolution, Nigel Shepherd, said: “The court would be able to make the same types of orders as they do currently on divorce, but on a very different and more limited basis.

“Awards might include payments for child care costs to enable a primary carer parent to work.”

Resolution and other family lawyers have made similar calls on behalf of cohabiting couples in the past but so far the government has been reluctant to take action.

In the absence of any automatic legal protection, many couples draw up living together agreements that state in advance how their assets should be divided if their relationship fails.

A few years ago the government started a campaign urging couples to draw up such agreements to cover things like finances, property and pensions.

Ownership of the family home is one of the most important issues. If it is in just one person’s name then the other partner could lose out. You may want to consider owning it as joint tenants or tenants in common which will make a huge difference to your rights.

If you don’t already have a will then you should draw one up as soon as possible. Otherwise your estate could pass to your relatives rather than your partner.

Unmarried fathers don’t automatically have parental responsibility for their children but they can acquire it with the agreement of the mother or by applying to a court. It is clearly better to deal with the matter while your relationship is strong rather than wait until after it has broken down.

Some people may feel embarrassed at first to be making such legal arrangements as it seems that they don’t fully trust each other. However, such concerns soon disappear and most couples end up feeling their relationship is stronger because both partners feel more secure.

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‘Tired’ pilot wins employment claim

A pilot who was suspended by travel company Thomas Cook after saying he was too tired to fly has won his grievance claim.

The Employment Tribunal was told that Captain Mike Simkins was suspended for six months and threatened with dismissal because he refused to fly a Boeing 767 with more than 200 passengers on board.

He told the company he was too tired because he had made three early starts in a row and on one of those days had worked an 18-hour shift. If he had continued to work as requested he would have been committing to a further 19-hour day.

He took legal action to have his suspension and threat of dismissal lifted.

The tribunal heard that Thomas Cook’s fatigue monitoring software showed that if Mr Simkins had flown his plane that day, his predicted loss of performance would have been equivalent to being four times over the legal alcohol limit for flying.

The company insisted that it had not asked him to fly while fatigued and said his claim was due to a disagreement with management.

The tribunal found in Mr Simkins' favour and ordered that the suspension should be lifted.

In a statement, Thomas Cook apologised for the “hurt and distress” suffered by Mr Simkins and said that it has “robust processes to ensure all the legal limits on flying time are met”.

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The new inheritance tax allowance on residential properties

Originally announced when George Osbourne was still Chancellor back in 2015, the long-awaited changes to inheritance tax on residential properties came into effect on 6th April 2017.

Currently, each estate benefits from a tax free allowance of £325,000. The residual amount exceeding £325,000 will be subject to inheritance tax at 40%. Given that the average price of a residential property in Bromley Borough is rapidly approaching £450,000; many estates are likely to face inheritance tax.

Married couples, who pass on their wealth to the surviving spouse on death are not liable to inheritance tax and additionally can transfer any unused tax-free allowance to the surviving spouse. So if the first spouse has not used any of the allowance, the tax-free allowance doubles to £650,000 for the estate of the surviving spouse. It should be noted that this ability to transfer the unused allowance does not apply to unmarried co-habiting couples.

However, in April the government introduced an additional allowance, called the 'Residence Nil Rate Band'. This applies separately from and in addition to the current tax-free allowance. The key aspects of the new 'Residence Nil Rate Band' are summarised below:

- The additional allowance was introduced at £100,000 in April 2017 and will gradually increase to £175,000 by 2020.
- A surviving spouse can again benefit from the transfer of their deceased spouse's unused Residence Nil Rate Band. By 2021, this could potentially mean a cumulative tax free allowance of £1M for married couples.
- The additional allowance applies if you own a home at the date of your death.
- The allowance does not need to apply to your main home, but can also apply in relation to any property which you have lived in at some stage, for example a holiday home.
- The allowance can only be set against one property.
- That residential property must be inherited by 'lineal descendants', which most notably includes children or grandchildren, but can also include their spouses, stepchildren and adopted children.
- But would not include: siblings or nieces and nephews etc.
- Special 'downsizing' rules mean that the additional allowance may still be available even if you sell your property during your lifetime, as long as a part of your estate then passes to lineal descendants after your death.
- For estates valued in excess of £2 million this additional "Residence Nil Rate Band" will be reduced on a sliding taper.

You should consider reviewing your Will in the light of the changes, since even peripheral aspects of it may have a substantial impact on your qualification for the additional allowance. Judge & Priestley are offering a free will review service and if you wish to take up our offer please contact **Brian Tan** on 0208 290 7353
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Conveyancing Quality

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