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

SPRING
2014

Inheritance tax payments to soar to £21 billion

The amount families will have to pay in inheritance tax is set to increase by £3 billion to £21 billion over the next five years.

The rise is due to the revival of the housing market, which is increasing the value of properties.

Meanwhile, Chancellor George Osborne wants to introduce new measures to make it more difficult for families to protect their assets by using trusts.

The current threshold for inheritance tax is £325,000, set in April 2011. There is a 40% inheritance tax on any assets beyond that sum. The government has frozen the threshold until 2018, meaning

the actual value is decreasing because of inflation. The value of the £325,000 is also being affected by the unexpected upturn in the housing market. House prices are predicted to have risen 25% by 2018, compared to their value in 2011 when the threshold was set.

The government is also planning to make it more difficult to protect assets within trusts. The details are yet to be finalised but will involve changes to the treatment of income from trust assets.

For example, income from such assets will have to be distributed within five years. If it isn't, it will be treated as capital, meaning that beneficiaries will have to pay more tax.



The government is still consulting on the proposals. We shall keep clients informed of developments.

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More than 6,000 apply to the new home buy scheme

More than 6,000 people have applied to use the Help to Buy: mortgage guarantee scheme since it was launched in October 2013.

The scheme is intended to help people get a mortgage to buy their own home.

Many people have been unable to take the first step on to the property ladder because they can't raise enough money for a deposit.

Help to Buy: mortgage guarantee means the buyer needs to raise only a 5% deposit on a property, with the government offering a guarantee of a



further 20%, so the risk to the lender is reduced. The scheme is available to both new buyers and existing homeowners. It is in addition to the Help

to Buy: equity loan scheme which came into effect on 1 April 2013 and applies to new build properties only. Most of the major banks have launched products that can work alongside the government schemes, making it easier for first time buyers to purchase their own home.

The property market will be a key factor in the country's recovery from the recession, and new house building is currently growing at its fastest rate since 2008.

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Dental practice manager wins her dismissal claim

The manager of a dental practice has won her claim for constructive dismissal after a tribunal found that she had not been given suitable training and support by her employers.

The issue arose when the manager was accused of failing to record sick days taken by a member of staff. She was suspended pending a disciplinary hearing.

She wanted one of the dentists to accompany her to the hearing but the employers refused because it was felt the dentist would support her rather than the practice.

The hearing was then rescheduled and the manager was told she would not be paid if she failed to attend. The manager felt intimidated and resigned following a period

of sick leave. She then claimed constructive dismissal. The Employment Tribunal ruled in her favour. It held that the employer had breached the implied terms of trust and confidence by its poor handling of the disciplinary process.

It noted that the manager had been appointed without being given proper training or a working system for recording staff absences.

The tribunal held that a reasonable employer would have investigated the issues and realised that rather than being guilty of misconduct, the manager simply needed support.

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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.

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How the law can help as dementia crisis looms

The government has launched a new interactive online map to enable people to see the quality of care provided for dementia sufferers in their area.

There are 670,000 people in England who suffer with dementia, and the number is likely to double over the next 30 years.

A further 21 million people have a close friend or family member who suffers from dementia related illnesses.

The online map will enable people to enter their postcode to find local information such as the rates of diagnosis, how often anti-psychotic drugs are prescribed and referral rates for further investigation.

Health Secretary Jeremy Hunt said: "As life expectancy goes up, our generation has a unique challenge: will those extra years at the end of our lives be ones we



can look forward to with anticipation - or will they be ones we end up dreading?"

"One in three of us will get dementia. And if we don't do better, for one in three those later years could be years of agony, heartbreak and despair - not just for those of us with the condition, but for our families, friends and loved ones too."

While the government is working towards improving care for dementia patients, many people are taking legal

steps to protect their interests in case they suffer from illness later in life.

Lasting Powers of Attorney (LPAs) enable you to nominate someone you trust to make decisions on your behalf if you ever lose the ability to do so yourself due to illnesses such as dementia.

The property and finance LPA allows you to appoint someone to look after your financial affairs, and the personal welfare LPA lets you grant an attorney authority over such matters as health care and the kind of treatment you receive.

LPAs should be drawn up with the help of a solicitor to ensure that they accurately express your wishes and protect your interests.

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Divorces may be set to rise as economy recovers

The divorce rate may be set to rise as the recession ends and the economy recovers, according to a survey of family lawyers.

The survey, carried out by accountancy firm Grant Thornton, found that 8 out of 10 lawyers felt that the recession had led to married couples delaying divorce proceedings.

The reason is thought to be that many couples simply couldn't afford to



separate because they were under too much financial pressure and uncertainty. Instead they chose to carry on with their marriage

as best they could. Now, as the economy starts to improve and people become less uncertain about their financial future, it's thought the divorce rate could start to increase as people take the opportunity to start a new life.

Lawyers in the survey expressed concern at the number of cases involving one or both partners trying to conceal the full extent of their assets from each other.

It's thought this trend is likely to continue, highlighting the need for couples to get expert legal help in tracing hidden assets to ensure a fair and reasonable settlement.

The survey also revealed that the



average age of people getting divorced is between 40 and 49. The main reason given for marriage breakdowns was that couples had simply "fallen out of love" with each other.

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Banker in redundancy case wins unfair dismissal claim

A banker who was made redundant following complaints that he wasn't being paid enough has won his claim of unfair dismissal.

Benjamin Price said that he had "signed his own death warrant" because he was "not prepared to put up and shut up".

The case centred on an unwritten agreement that Mr Price had with his employers. He had been employed by Morgan Stanley for 14 years, and was on a salary of £533,000.

He was headhunted by rival firm Citibank in 2010, who offered him an

annual salary of £670,000. Mr Price informed his employers of the offer, and it was agreed that they would match it in order to keep him.

However, Mr Price's salary actually decreased to £518,000. He complained to his superiors, but was told that there wasn't enough money to pay him more.

He was then one of several staff who were made redundant in 2012, despite his positive performance for the company.

Mr Price took action against the bank, claiming that he was only selected for

redundancy because of his ongoing complaints about his salary.

The employment tribunal found in favour of Mr Price and said: "The employer orally agreed to increase remunerations and increase the responsibilities of Mr Price. The dismissal was procedurally unfair."

Morgan Stanley were ordered to pay Mr Price an undisclosed amount for unfair dismissal.

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Trust protects family home from the taxman

Setting up a simple trust relating to his mother's home has saved a man and his wife several thousand pounds in capital gains tax.

The case involved a woman who sold her house in 1996 to her son and his wife on condition that she was allowed to continue living there for the rest of her life or until she remarried.

She remained there until 2005 when she went to live with her son and his family following an injury. Her home was eventually sold in 2007.

HMRC calculated that the couple had made a large profit on the property, which meant that they were each liable to pay capital gains tax. The couple argued that the property was held on trust and so was not liable. Tax officials insisted the money was payable because the couple had acquired ownership of the property and simply granted a lease to the mother.

The tax tribunal ruled in favour of the couple. It said that in



parting with ownership of her home, the mother was placing herself in the hands of her son and daughter-in-law, but only on the basis that they accepted specific legal obligations to her.

The couple had to let her continue living there. They did not have complete control over the property and were not free to sell it or do anything else without her agreement.

That was the only basis on which the mother had been prepared to give up absolute ownership of her home. In acquiring the property on these terms, the couple were assuming the role of trustees and so therefore were not liable to pay capital gains tax.

As this case illustrates, trusts can be extremely useful in shielding assets from tax liability. However, they have to be drawn up correctly to ensure they are effective.

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Levy exemption on homes will cut costs for self-builders

The government says people building their own homes will now save thousands of pounds because they no longer have to pay the Community Infrastructure Levy.

The levy enables councils to raise funds from developers. The money is used to fund the infrastructure needed to support the development and to support local communities. Ministers say the levy will no longer apply to homes built or commissioned by individuals, families or groups of individuals for their own use as owner-occupiers.



Planning Minister Nick Boles said: "Our changes will make an enormous difference to people looking to realise their dream

of having their grand design built and will save self-builders thousands of pounds. We urgently need to build more homes and changes to the levy will help increase housing supply and help businesses grow by making the system more flexible and fairer."



The abolition of the levy on self-build homes came into effect on 24 February.

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Father loses appeal over parental responsibility for son

Fathers usually succeed when they apply for a court order to grant them parental responsibility for their children, as it is generally considered to be in the children's best interests.

However, applications will be refused if the courts feel it would be to a child's detriment, as happened in a recent case before the Court of Appeal.

It involved an unmarried couple who had separated when their son was five years old.

The boy lived with his mother but when he was six, the father took him out of school and disappeared without telling the mother what was happening.

He was then tracked down by police and agreed to return the boy to school the following morning.

Court proceedings began and for the following two years the father was only allowed to see his son under supervision at a contact centre. He then applied for parental responsibility and direct contact.

Both the mother and the son opposed the applications.

The judge found that the mother was not exerting any emotional pressure on her son in respect of his relationship with the father.

The court also accepted that the father had demonstrated commitment to his son and they had an attachment to each other.

However, the judge held that the father was more concerned with his own perceived rights and needs than with

his son's needs and feelings. It was feared that if he were granted parental responsibility, he would use it to exercise control over the boy and the mother. Both applications were refused.

The father appealed saying the judge had been wrong about his motives.

The Court of Appeal upheld the judge's decision. It also ruled that the mother and son needed to be free from the burden of further litigation.

The father was therefore told he could not make any further applications for two years.

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£1m programme to tackle pregnancy discrimination

The government is launching an independent research programme to tackle the problem of workplace discrimination against pregnant women.

The Minister for Women and Equalities, Maria Miller, has given the go-ahead for the project which will analyse the effect of pregnancy discrimination on both families and the economy.

The £1m study will be carried out by the Equality and Human Rights Commission (EHRC). It is nearly 10 years since the government last carried out research into these issues.

That study found that half of all pregnant women felt they were discriminated against over issues such as maternity leave. More than 30,000 women felt they were being forced out of their jobs. It also revealed that many pregnant



women were being dismissed before they were entitled to maternity pay, which resulted in families losing out on nearly £12m per year.

Following the study, many of the problems were rectified. Expectant

mothers were given more rights such as paid time off to attend hospital and doctors' appointments, and an increase in statutory maternity leave and pay.

However, discrimination against pregnant women still exists. Since 2007, more than 9,000 pregnancy discrimination claims have been brought against employers in the UK.

Mrs Miller said: "It's unacceptable that women suffer from discrimination when they become pregnant and yet many are saying that they are treated unfairly."

Women who feel they are suffering discrimination at work are entitled to claim compensation.

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Widow waited too long to challenge husband's will

People who feel they have not been properly provided for in a relative's will can ask the courts to step in and grant them a larger share of the deceased person's estate.

However, unless there are exceptional circumstances, they usually have to begin proceedings within a six-month time limit. Failure to do so could mean the claim will be rejected, as happened in a recent unfortunate case.

It involved a woman whose husband died in 2005. They had been together for 36 years.

The husband had two sons from a previous marriage. His will provided his wife with specific gifts and said that the sons also had the power to provide for her from the estate.

The wife wasn't happy with the amounts paid to her by the sons. She discussed the matter with her accountants in 2005 but did not begin legal proceedings until 2011, six years after the expiry of the six-month time limit. The judge

at the first hearing said that her claim could not be granted because she had not acted promptly enough. The Court of Appeal upheld that decision. It pointed out that if the couple had been divorced on the day the husband died, it was quite likely that the wife would have been granted half the assets within the estate.

It was therefore arguable that she had a good case for a better financial provision from the will.

However, there were no exceptional circumstances that could justify the delay in making a claim. Her complaint that she was not receiving enough for her needs was apparent from the outset but she had done nothing about it.

Therefore, she could not be allowed to make a claim six years after the expiry of the time limit.

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