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

SUMMER
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Government Scraps Inheritance Tax for Homes Valued Up To £1 Million

George Osborne gave some welcome good news to homeowners in his 2015 summer budget when he announced the inheritance tax (IHT) threshold would be raised to £500,000.00 per person. This means that a married couple who own a home worth up to £1 million will not be required to pay any IHT at all if they wish to pass their home onto their children.

For those with family homes in London and the South East, where house prices have risen sharply over the last few years, this will provide homeowners with a sense of relief that the Government is at last levelling out the playing field when it comes to family homes being subject to IHT.

What is the Current IHT Threshold?

Since 2009, the IHT threshold has remained at £325,000 per person. House prices have soared since the threshold was set, with London's average house price now 35% higher than at its peak in 2007. In the South East of England house prices are now 9.7% above their 2007 peak.

Married couples are entitled to combine their allowance together, allowing for a threshold of £650,000 before the provisions of IHT are triggered. Once the threshold is reached, IHT is payable at 40% on the value of the estate over and above the £325,000 (or £650,000).

Shared ownership homes may become easier to sell

It could soon be easier for people in shared ownership homes to sell their property.

The government funded schemes enable people to buy a share in a property, with a registered housing provider owning the rest.

Typically, a purchaser may buy a 50% share in the home with the option of increasing their stake if and when they can afford to do so.

Under the current system, when someone wants to sell a shared ownership home, they have to offer first refusal to their housing provider. This can often lead to delays in the sale process. New proposals now being considered would enable a person to put the home on the open market at the same time as offering first refusal to the provider. It's thought this would take months off the average time taken to sell.

We shall keep clients informed of developments.

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What Will Change?

The Government will allow a "family home allowance", eventually worth £175,000 per person, to the existing £325,000 tax free allowance from April 6, 2017.

In 2017/18, this will be worth £100,000, rising to £125,000 in 2018-19, £150,000 in 2019-20, and £175,000 in 2020-21. This will allow individuals to pass on assets worth up to £500,000, including a family home, without paying any IHT at all. For married couples and civil partners, the total is £1m.

What if a Person Chooses to Downsize to a Smaller Home?

If individuals decide to downsize their home at any stage, they will be eligible for an "inheritance tax credit" so that even if they sell an expensive property they will still qualify for the new threshold.

Before the 2015 election, the Chancellor stated that the planned IHT reform "supports the basic human instinct to provide for your children".

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Could a Help to Buy ISA get you a new home?

Help to Buy ISAs offering first time buyers a 25% bonus on their savings will be available in the autumn.

The new ISAs are designed specifically for first time buyers. The key point is that the government will add £25 to every £100 you save. The maximum bonus is £3,000, available when your savings in the ISA reach £12,000.

There is no minimum investment. You can start with an initial deposit of up to £1,000 and then add up to £200 every month. This means it would take you four and a half years to invest a total of £12,000 and so qualify for the maximum bonus of

£3,000. However, you don't have to invest that much or save for that long. The bonus will be available for homes worth up to £450,000 in London and £250,000 in the rest of the country.



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Pre-nups more popular – not just with the rich

Pre-nup agreements are often thought of as just for the rich but they are now being used by couples from all walks of life.

They are particularly popular with people entering second marriages who want to safeguard their assets for their children from a previous relationship. People who have inherited money or perhaps been awarded compensation for an injury or employment claim are also using pre-nups to protect their interests.

Some law firms throughout England and Wales have reported that inquiries about marital agreements have risen by as much as 50% over the last 12 months.

It's thought the reason for the increase is likely to be a growing confidence that such agreements will be fully effective in the event of a marriage breakdown. Pre-nups are not legally binding in this country although there has been a growing trend for courts to apply them unless there are compelling

reasons against doing so. Generally, the courts now only overturn a pre-nup if it is deemed unfair or if one party was pressurised into signing it against their will.

The backing of official bodies like the Law Commission have also given people confidence that pre-nup agreements are here to stay and will be taken seriously.

The commission has called for legislation to formalise the new status that the pre-nup has been given by the courts. It has recommended a 'qualifying nuptial agreement' which would enable a couple to decide how to divide their assets, before or during their marriage, in the event that they divorce. As long as legal requirements are met they would be binding in the court.

One other possible reason for the increased interest in marital agreements is that people are becoming more pragmatic in their attitude to marriage.



There is a growing acceptance that relationships can break down and that if that happens, a pre-nup can help to reduce much of the stress and heartache of reaching a financial settlement that is fair to both sides.

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Mediation may prevent costly neighbour disputes

The government wants to promote mediation as a way of avoiding costly neighbour disputes.

The move follows concerns expressed by the Conservative MP Charlie Elphicke about the way such disagreements often spiral out of control.

Mr Elphicke introduced a Private Member's Bill to oblige property owners to appoint impartial surveyors to settle boundary disputes.

The government rejected the idea but ministers are now looking at ways to encourage people to consider mediation if they have a dispute with a neighbour.



It is, of course, all too easy for matters to get out of hand if people don't maintain a sense of perspective when disagreements arise. It is usually better for disputes to be settled amicably but if that is not possible then both sides should seek legal advice before attitudes begin to harden.

Clarification of the legal position may help resolve the problem right at the outset. If there is still a disagreement then a solicitor may be able to arrange mediation so that a settlement can be reached that is fair to both sides.

If agreement still can't be reached then litigation may become necessary. It is then even more important to get sound legal advice so that the dispute doesn't escalate to a point where the costs involved are out of proportion to the value of the claim.

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Father must accept reduced contact with his daughter

A father has been told he must accept reduced contact with his daughter after losing his appeal against a court ruling.

The case involved a couple who had separated when their daughter was 18 months old. The girl lived with her mother but the father applied for a shared residence order. Before the hearing could take place, the girl claimed that her mother had hit her causing a bruise on her head.

However, social services suspected that the father had manipulated her into making the allegation.

Care proceedings began and the judge accepted psychiatric evidence that the father suffered from personality disorders. The court concluded that the mother had not caused her daughter any harm. An order was made placing the girl with

her mother and maternal grandparents. Contact with the father continued but the girl often came back feeling unsettled. There were reports that the father had been involved in a number of bizarre incidents. The local authority investigated the case and concluded that the father's level of contact should be reduced from 26 meetings a year to four.

The father claimed there had been a miscarriage of justice but the High Court ruled against him. The judge said that contact could increase if the father altered his behaviour and sought treatment for personality disorders.

The Court of Appeal upheld those decisions.

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Government steps up fight against dementia

The government is stepping up the UK's fight against dementia, which it sees as one of the main health issues facing the UK over the next 20 years.

Prime Minister David Cameron has launched, Challenge on Dementia 2020, as the next phase in the effort to tackle the debilitating illness.

The most important measure will be to invest more than £300m over the next five years into research and medical innovation. There are also plans to set up an international dementia institute to make the UK a world leader for research and medical trials.

Mr Cameron said: "Dementia is one of the greatest challenges of our lifetime. Because of the growing strength of our economy, we can invest in research and drug-development, as well as public understanding, so we defeat this terrible condition and offer more hope and dignity for those who suffer."

It is encouraging to see such comprehensive measures being put in place to tackle dementia, but as well as health issues for sufferers, there are also practical matters relating to how their financial and business affairs should be managed. Sufferers



may have to rely on their families to make important decisions for them, but this can be difficult if legal arrangements have not been made in advance. Families may have to go through complicated court procedures to be granted authority to manage the sufferer's affairs.

You may not be able to predict your future health but it is possible to put procedures in place so that people you trust will be able help you if you do fall ill in the future.

The best way to do this is by setting up a Lasting Power of Attorney (LPA). An LPA enables you to nominate someone you trust to make decisions on your behalf if you ever lose the ability to do so yourself through 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.



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Second marriages sparking family disputes over wills

The rising number of second marriages and relationships involving older couples has led to an increasing number of disputes over wills over the last few years.

Conflicts due to relationships started later in life have now become one of the main reasons for families taking legal action if they feel they've missed out on their rightful inheritance following the

death of a relative. A typical problem arises when a man marries for a second time and then leaves all his estate to his second wife and nothing or very little to the children from his first marriage.

Such children may well be adults in their thirties and forties who find it very hard to accept that the wealth their father built up in a long marriage with their mother should suddenly be left to a second wife

who may only have been with him for a few years.

The problem also occurs the other way round with a man leaving most of his wealth to the children of his first marriage and not providing adequately for the needs of his second wife. She may then be prompted to challenge the will.

There are also cases in which a will ignores someone like a son or daughter who expects to inherit but gives no explanation as to why that person has missed out.

Many of these problems could be avoided if you make your intentions clear when drafting your will.

If you want to exclude someone who might otherwise expect to inherit then it's best to explain why you want to do that. A statement of wishes will be recognised by the courts and avoid any potential disputes.

Anyone wanting to challenge a will must do so within six months of probate being granted.

Denial of emails was 'discrimination'

An employee who was unable to enter into a share purchase plan because he wasn't allowed to receive company emails while off work with stress has won a disability discrimination claim.

The employee worked for a company that had a policy of denying long-term absentees access to corporate emails.

This meant he was not made aware of the company's new share purchase plan and so was unable to take advantage of it. He also suffered delay in joining a second plan, which meant he incurred a large tax liability.

He needed hospital treatment after suffering further stress while struggling to pay the tax due when he belatedly

exercised the share options. The employment tribunal found that the company had substantially disadvantaged the employee by denying access to emails. It had failed to make reasonable adjustments to keep him informed of developments.

The tribunal found that the employee had been subjected to discrimination arising from his disability. He was awarded £5,000 for the injury to his feelings and £5,000 for the loss caused by the employer's failure to provide timely information about the share options.

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Leading judge wants 'no-fault divorce' system

One of the UK's leading judges has called for the introduction of no-fault divorces to remove the sense of blame and bitterness that accompany so many break-ups.

Baroness Hale says the current system is outdated. She wants it to be modernised so that couples don't end up making unnecessary accusations about infidelity or unreasonable behaviour.

The problem arises because people currently have to give one of five possible reasons



when seeking a divorce: adultery, unreasonable behaviour, desertion for two or more years, two years' separation

with consent, or five years' separation without consent.

People who want to get out of their marriage quickly may be tempted to accuse their spouse of adultery or unreasonable behaviour, which can lead to bitterness and make the divorce process more traumatic than necessary.

Baroness Hale wants to make it easier for divorces to be granted without one party being held at fault. However, she is opposed to quick divorces and believes couples who claim their marriage has



broken down should have a 12-month cooling off period to enable them to reflect and prepare properly for their separation.

She said: "We should make it take longer to get a divorce and encourage people to sort out what happens to the home, children and money before, rather than after, they get a divorce."

Baroness Hale believes there is now widespread support for reform, both among lawyers and the public throughout the UK.

Sir Paul Coleridge, former family High Court judge and chairman of the Marriage Foundation, backed the call for no-fault divorce. He said: "Lady Hale, a complete expert with decades of experience across this whole field, is entirely right. Our current system which pretends to be fault based is in practice and reality no such thing. The fault is largely invented to get a quick divorce - a hangover from pre-1970 days."

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Divorce Advice Clinic

Judge & Priestley's Wednesday clinics provide expert legal advice in relation to any divorce and divorce settlement issues.

"Relationship and family disputes can be a difficult time for everyone involved. Judge & Priestley believes that family law is not simply another form of litigation. Family cases involve personal and emotional issues which needs specialist family law advice, but also a practical and sensitive approach which we can offer at Judge & Priestley."

The sessions will be run by Ailsa Anderson, a qualified solicitor in the family department, every Wednesday afternoon from 2pm - 5pm at Judge & Priestley's offices in Bromley.

Each session will last half an hour at £50 + VAT. If you are interested in this service and would like to arrange an appointment, please contact

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