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

SUMMER
2014

A REPUTATION TO BE PROUD OF: JUDGE AND PRIESTLEY CELEBRATE 125 YEARS

Bromley law firm Judge & Priestley celebrated 125 years at the Law Society in London on Thursday 15 May, with over 100 clients from local banks, property developers, accountants, estate agents, the legal profession and other organisations.

Mr Steven Taylor, Managing Partner, welcomed guests to the dinner, commenting "We are proud to be celebrating our 125 years and of our heritage.

"Today the firm has continued to expand and thrive with 130 employees and 10 Partners. We look forward to the future and we will continue to offer our clients a professional and expert service."

There still remains a strong historical link, as Steven Taylor the Managing Partner, is the son of Peter Taylor, who was a former Partner and who was with the firm from 1951 until his retirement in 1991.

Steven Taylor, Managing Partner front left with Mark Oakley, Partner front right together with the Partners and Senior Management Team

In 1889 Eugene Judge and Frederick Priestley, the founders of Judge & Priestley, commenced partnership together. Eugene Judge showed a strong interest in litigation and in particular was an expert in debt collection and this clearly influenced the future of the firm.

There have been four generations of the Judge family, with Michael Judge, the last to retire in 2001 after 41 years. The first office opened in London in 1889 and during the Second World War, the office moved to the Bromley area.

Later the firm had several offices in and around Bromley and South East London.

These were consolidated when the firm moved to its current office in West Street which was built to specification in 1981.

The firm has continued to grow, and this has been particularly the case for debt recovery work. The firm's private and commercial client departments also continue to thrive and Judge & Priestley advises and supports clients across a wide variety of services.

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Pre-nups could be legally binding under new law

Marital agreements including pre-nups and post-nups could become legally binding without the need for court approval under a proposed new law.

At present, such agreements are not legally binding, although there has been a growing trend for courts to uphold them unless they are unfair to one side or the other.

Now the Law Commission, which advises the government on legal matters, wants to introduce "qualifying nuptial agreements" which would be enforceable contracts in their own right, not subject to the scrutiny of the courts.

The commission's report says: "The qualifying nuptial agreement will be a reliable way for couples to decide in advance how their property will or will not be shared, without having the fairness or unfairness of their agreement scrutinised by the court."

The commission says that an agreement would only be a qualifying nuptial agreement if it meets certain requirements when being drawn up.

Both sides would need to receive independent legal advice and both must fully disclose all their assets in advance.

Justice Minister Simon Hughes said the government will now consider the proposals in detail.

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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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Mediation offers ‘more protection’ for children

Ministers say children will be better protected and family disputes will be less stressful following changes to legislation relating to divorce and separation.

The main change is that separating couples will be obliged to attend mediation sessions to try to reach agreements regarding childcare and finances, before they can take their disputes to court.

If mediation proves unsuccessful, the courts will try to settle cases with both parents being granted regular contact with their children, when it is safe and beneficial. There will also be a 26-week deadline to settle family disputes.

Justice Minister Simon Hughes, said: “We are making sure the welfare of children is at the heart of the family justice system. We want to keep families away from the negative effects that going to court can have and to use alternative solutions when they are suitable.

“This is why we have changed the law to make sure that separating couples always consider mediation as an alternative to a courtroom battle.

“When cases go to court we want them to happen in the least damaging way. So we are improving processes, reducing excessive delays, and we have also changed the law so that care cases must be completed within 26 weeks.”

The amendments, effective from 22 April, are at the recommendation of the 2011 Family Justice Review.

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Not making a will could be a nightmare for your family

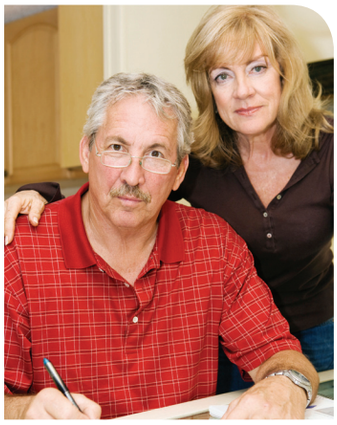
Nearly two out of three people in the UK haven’t made a will and so risk creating a financial nightmare for their families, according to new research.

If you die intestate, that is, without having made a will, there is no way of knowing who you would have wanted to inherit your estate. In these circumstances, your wealth is passed on in a way laid down by law. It means that the people who matter most to you may miss out, while most of your money goes to relatives you may not see very often or even like very much.

People who live together but are not married are particularly at risk. The law doesn’t automatically recognise cohabitants in the way that it recognises spouses so your partner may be overlooked when your estate is being passed on to others.

There may also be unnecessary complications for your children and dependants if you haven’t stated who you would like to care for them after your death.

The research was carried out by the Dying Matters Coalition. The President of the Law Society, Nicholas Fluck, said: “It is extremely concerning that a significant number of people have not written a will. It is understandable that most of us are uncomfortable discussing our dying wishes, but you have nothing to lose and your loved ones can have everything to gain if you ensure your affairs are in order. The families of those who die intestate will often use their experience as a cautionary tale of struggling with banks, utility companies and property sales, for example.



“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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Husband must pay ex-wife lump sum for ‘clean break’

A man has been told to pay his ex-wife a lump sum so that he can stop making annual payments once he has retired.

The case involved a couple who had been married for 22 years before getting divorced in 2005. Both were qualified accountants, but the wife left work to raise their children. When they got divorced, the wife received the family home, and an annual maintenance payment of £90,000, which was later increased to £150,000.

The man then re-married and started a family with his new wife. He then found out that his new wife had terminal cancer, so he planned to raise his children himself after his retirement.

He wished to end the annual maintenance payments to his ex-wife. She agreed to this, but only on the basis that she received a final lump sum. The man argued that the £2.7m in assets his ex-wife now possessed should be enough to provide for her for the rest of her life.

The court ordered the man to make a final lump sum payment to his ex-wife in order to achieve a ‘clean break’ for both. The judge acknowledged that the ex-wife had been treated fairly so far, but pointed out that she must also be treated fairly in this final settlement. It was estimated that she required an annual income of £80,000, of which her estate would provide about £55,000.

The husband was ordered to pay a lump sum of £400,000, which would provide the extra annual income she required based on a reasonable prediction of her life expectancy.

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Levy exemption on self-built homes now in force

The government has made it easier for people to build their own homes by cutting the Community Infrastructure Levy on self-built accommodation.

Property developers have to pay a levy to local councils to help with the cost of the infrastructure needed to support the development.

Some local councils charge £100 per square metre for residential property. This means that a four bedroom house, which would likely cover 150 square metres, would cost the developer £15,000.

However, as of 24 February, the levy no longer applies to self-build developers. Communities Secretary Eric Pickles said:

"Building your own home is always a challenge and we are doing what we can to help people realise their dream and provide a home for their family. This change will save self-builders thousands of pounds and help many more in the future.

"By boosting the numbers of people building their own home we can help increase the number of new houses built each year in this country and support local businesses. There are too many levies and charges on housing."

Home owners who build an extension will also be exempt from the levy.

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Will your hard earned money be lost to inheritance tax?

The rising value of houses could turn inheritance tax into a major issue for thousands of families across the UK.

The problem is that the inheritance tax threshold has been frozen at £325,000 until 2018; by that time, house prices are expected to have risen by 25%

It's likely therefore that many people will find they own properties and other assets which take them above the £325,000 threshold. It means that when they die, much of the wealth they have worked hard for all their lives could go to the taxman instead of their families.

Thankfully, there are several steps people can take to reduce the burden of inheritance tax.

One of the most obvious ways for committed couples to reduce inheritance tax is to get married. When one partner dies, their share of the estate will then be passed on to their spouse free of any inheritance tax.

In addition, any unused tax allowance will also be passed on to the surviving spouse. This means that if a person dies and their share of an estate is worth £250,000, their spouse will be entitled to the remaining unused allowance of £75,000, giving them a total allowance of £400,000 based on current figures.

However, it isn't a set figure that is passed on but a percentage.

In effect, this means that if a person dies and their assets only account for 50% of their allowance, the other 50% is passed on to the survivor.

This percentage will then apply even if the inheritance tax allowance rises at some point in the future. So, for example, if the allowance rises to £500,000, the 50% will be worth £250,000.

Another way to pass money on without inheritance tax implications is to adopt the 'little and often' approach. This allows you to give away £3,000 per year tax free. It's a useful way to give money to your children without them running the risk of having to pay tax on it when you die.

There is also a 'seven year gift rule' which enables one person to give money or assets to another. The recipient will not pay inheritance tax as long as the person lives for at least seven years.

If the person dies within seven years of making a gift then the recipient could be liable to pay the 40% inheritance tax, depending on the value of the estate.

These are just some of the ways you could reduce inheritance tax liability. A little planning now could save your families thousands of pounds in the future.

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Boy to live with father because mother ignored court

A court has ordered that a six-year-old boy should live with his father because the mother had constantly ignored contact orders.

The two parents separated before the boy was born and the mother became the primary carer following the birth.

The father tried to establish contact with his son but the mother objected.

The subsequent court proceedings lasted three years. The mother ignored several contact orders that would have allowed the father to see their son.

She could provide no reason for her reluctance to allow her son to see his father whose conduct had been unimpeachable during the proceedings.

The court made another contact order but again the mother refused to comply. The father then applied for a residence order.

The judge ruled that the son should live with the father and the mother would have visiting contact. That ruling has now been upheld by the Court of Appeal.

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Number of first-time home buyers at seven-year high

The number of first-time home buyers has risen to the highest level for six-and-a-half years, according to the latest figures.

In March this year, 31,400 homes were sold to first time buyers, according to LSL, owner of Your Move. This is the highest level since 2007 when the property market was near its peak.

The government's Help-to-Buy scheme, which makes 95% mortgages more readily available, is largely responsible for the upsurge. Because of the scheme, the average loan to value has increased from 80.6% to 83.5% in the past 12 months.

While the average house price has risen, the average deposit has fallen to a three-year low of £23,802. The estate agency chain, Sequence, has also released figures that show that transaction levels were up by 24% from March last year and that the average value of homes has risen by 11% to £212,372.

David Newnes, director of Your Move, said: "More first-time buyers are seizing the opportunity to have a helping hand from the government in putting together a deposit. Help to Buy has allowed the bottom of the market to stay buoyant, despite property prices increasing."

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Court corrects costly error in family trust document

An extended family have been able to rectify a trust document which would have prevented them benefiting in the way intended when the settlement was first drawn up.

The case involved a farming business. The shares were originally held by a husband and wife team in the 1970s.

The couple put a number of shares into a settlement in 1985. In 1994, they proposed a further settlement to hold the shares in the family company and prevent any shareholders calling for the break-up of the business.

The new settlement was drafted in such a way as to include the couple's children as settlors in addition to the parents. This meant they could not also be beneficiaries because the definition of beneficiaries excluded settlors. This was not appreciated at the time. When the mistake was noticed several years later, the children sought court help to rectify the error.

The court held that rectification was a discretionary remedy and should be exercised with caution and only on strong evidence. The parents were no longer alive so could not give direct evidence as to their wishes.

However, it was clear that the intention of the settlement had been to benefit all the members of the family and to keep the business together. The settlement had been discussed with the children and they had been told that they would be beneficiaries. Unfortunately, they had not read the documents and did not understand the significance of being included as settlors.

In the circumstances, the court held that it was right to rectify the mistake to remove the children as settlors and include them as beneficiaries.

Trusts can be extremely helpful in protecting family assets and reducing tax liabilities. However, they need to be drawn up correctly under legal advice or they can lead to unforeseen consequences, as this case illustrates.

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