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

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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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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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Help to Buy ISAs available for first time buyers

Help to Buy ISAs, which provide first time buyers with a 25% bonus on their savings when buying a home, are now available from banks and building societies.

The scheme is designed to help thousands of young people to get on to the housing ladder.

The government has pledged to add £25 to every £100 you save for a home. The maximum bonus is £3,000, available when your savings in the ISA reach £12,000.

Several banks and building societies, including Barclays, Lloyds, Nationwide, NatWest, Santander, and Virgin Money, are already offering Help to Buy ISAs and most others will be doing so soon.

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 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 minimum investment needed in the ISA to trigger the bonus is only £1,600. Couples buying a home together can each take out a Help to Buy ISA and so double the bonus.

The ISAs only provide the extra 25% if the money is used to buy a home. The bonus is available for homes worth up to £450,000 in London and £250,000 in the rest of the United Kingdom.

The ISAs can be used in conjunction with other initiatives such as the Help to Buy schemes. There are various options that enable buyers to get a new home with only a 5% deposit. The government provides a loan or guarantee for a further 20%, making a total deposit of 25%.

The government has outlined five steps that first time buyers need to follow to claim their bonus from the Help to Buy ISA:

- first time buyer puts money away in a Help to Buy: ISA account
- first time buyer closes their account when they are ready to purchase their first home and receives a closing letter from their ISA manager
- first time buyer gives the closing letter to their solicitor
- using the letter, the solicitor applies online for the government bonus
- bonus is transferred to the solicitor, who completes the purchase of the home using the full bonus amount.

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Manager awarded £41,000 after being victimised at work

Employment Law

A senior manager has been awarded more than £41,000 compensation after being victimised at work by an employee.

The manager was in charge of 135 staff with the company. She had held the post since being promoted in 2010.

The East London Employment Tribunal heard that an employee "took against her" after saying she had accused him of not working his full shift.

She said he then tried to undermine her authority and accused her of harassment and bullying. An investigation by the company cleared the manager of harassment but found there was evidence of bullying. She was demoted and moved to another post. She decided to take legal action claiming that she was the one who had been victimised.

The tribunal found in her favour. It held that the employee had not been able to provide any evidence of bullying to back up his claim. He had used the company's harassment and bullying policy to raise a complaint against the manager when there was no evidence to support it. He victimised her, taking every opportunity to undermine her authority.

The tribunal also held that the company had failed to support her and had dismissed her concerns.

It awarded her a total of £41,000 compensation for the victimisation she had suffered, although that figure may be revised at another hearing before the County Court.

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Inheritance tax payments soar with rising wealth

Inheritance tax payments have been increasing due to rising house prices and an overall rise in family wealth.

The latest figures from HM Revenue & Customs show that just over £3 billion was collected in inheritance tax in 2013, an increase of 15% on the previous year and the highest figure since 2008.

Financial experts believe the increase is due to rising house prices and the increased value of investments pulling more families into the inheritance tax arena.

The inheritance tax threshold has remained at £325,000 since 2009. It's due to be increased in 2017 but it's feared the rising value of people's overall assets is likely to cancel out much of the benefit.

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.

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 without any tax burden.

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 help to save your family thousands of pounds in the future.

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Daughter can be mother's deputy despite living abroad

A woman has been appointed as her mother's deputy in a power of attorney arrangement despite living more than 3,000 miles away in the United States.

The judge held that the arrangement could work perfectly well because of the advances in modern technology, including online banking.

The case involved a woman who had been admitted to hospital in the UK suffering with dementia. Her daughter applied to become her deputy so she could manage her property and financial affairs.

The woman's two brothers objected because the daughter lived too far away in the US.

The Court of Protection, which looks after the interests of vulnerable people, found in favour of the daughter. It said it used to be a commonly held view that the court should not appoint anyone as a deputy who lived abroad.

However, it was relevant that there had been significant advances in cheaper air travel and in communications, such as online banking, digital reporting, mobile phone, email and Skype. The fact that someone lived abroad should not prevent their appointment as a deputy if they were the most suitable candidate and their appointment was in the patient's best interests.

In this case, the wishes of the mother could not be clearer: she wanted her daughter to look after her affairs.

She was the most suitable candidate for appointment as deputy, and the appointment was in her mother's best interests.

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Ex-wife can claim a share of former husband's estate

A woman who was divorced but still living with her former husband when he died has won the right to claim a share of his estate, despite opposition from his sons.

The case involved a man who had made a will in 1980 leaving all his estate to his two sons.

In 1982, he divorced his wife and they both agreed to a consent order that neither of them should be entitled to claim against the other's estate unless they remarried.

They never did remarry but were living together at the time of the husband's death.

The wife brought a claim for a share of his estate on the basis that although they had not remarried, they had been living together in the same house as husband and wife. She believed this entitled her to inherit as a cohabitant.

The man's sons opposed the application on the basis that the consent order only allowed her to make a claim if the couple had remarried, which they had not. The court ruled in favour of the wife. It held that since the couple had made the agreement, Parliament had introduced the right for people to make claims as a cohabitant in certain circumstances.

The agreement did not over-ride those new provisions. The woman was therefore entitled to proceed with her claim.

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Most people prefer a solicitor to write their will

The vast majority of people still prefer to ask a solicitor to write their will, according to new research by Will Aid.

The number of people consulting solicitors about their will has risen by 2% over the last four years. Meanwhile, the number of people using will writers instead has fallen from 17.9% in 2008 to only 10.5% in 2015. The number of people using banks and other organisations has fallen from 8.7% to 5.9% over the same period.

Will Aid says many people are unaware that will writers can practise without having proper training, regulation or insurance. Will Aid Campaign Director, Peter de Vena Franks, said: “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.”

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Husband wins appeal over an ‘unworkable’ settlement

A husband has won his appeal against a divorce settlement that he claimed would not have been possible to put into practice.

The case involved a couple who were both 58 and were divorcing after 13 years of marriage. The wife worked in a primary school and the husband owned a small company.

At the hearing before the district judge, it was agreed that the couple's home would be transferred to the wife and that she would sell her shares in the company to the husband. He would also pay her a separate lump sum of £60,550. The judge then sought to equalise the couple’s capital assets. When calculating the husband’s capital, he included the company’s value of £206,000.

He concluded that the husband would need to pay a further sum of £40,550 to keep things equal. He considered that the husband could raise the total sum of £101,100 from the company if necessary.

The husband appealed on the basis that the judge had not recognised that selling the company to raise the lump sum was not practicable. The judge had also failed to account for tax or the debt that the husband owed to the company, and ignored evidence showing that he had various other liabilities.

The Court of Appeal ruled in favour of the husband. It said the district judge had not applied the correct principles in some of his calculations and had been wrong to ignore the issue of tax. He had also failed to analyse the schedule of indebtedness provided by the husband, which showed total liabilities of £61,101.

The court ordered that there should be a rehearing to calculate a new settlement.

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Right to Rent regulations come into force in England

On 1 February 2016, the Right to Rent Immigration Checks Scheme came into force in all of England.

Right to Rent was introduced in the Immigration Act 2014 and the Right to Rent provisions are contained in Chapter 1, Part 3 of the Act. It initially came into force on 1 December 2014 when it was tested in the West Midlands on a trial basis. However, from 1 February 2016, the Right to Rent rules will apply to all new private tenancies and various other types of tenancies. Certain tenancy agreements will be exempt from the Right to Rent rules and a full list can be found at Schedule 3 of the Act.

The Act provides that certain classes of people will be disqualified from occupying property under a residential tenancy agreement. If a Landlord’s property falls under the Scheme and the property is being let to adult occupants, Landlords are responsible for carrying out prescribed checks before allowing an adult to reside in the property. A Landlord must carry out these checks on all adults occupying the property even if they are not named on the tenancy agreement.

The Right to Rent checks will have to be carried out for all agreements entered into on or after 1 February 2016 (if outside the pilot area in the West Midlands). Section 22 of the Act provides that a Landlord must not let an adult occupy premises under a residential agreement if the adult does not have the Right to Rent ie is disqualified due to their immigration status.

It is important to note that, even after prescribed checks have been carried out, a Landlord may be required to carry out follow up checks and checks on new adults.

There are specific rules regarding assigning responsibility to an agent and in a situation where a tenant sublets the property.

Contravention of the Act will result in serious consequences to a Landlord. Although a breach is not a criminal offence, if it transpires that a Landlord has rented to a tenant who does not have the Right to Rent, the Landlord could incur a financial penalty of up to £3000. If there has been a contravention, the burden of proof will be on the Landlord to prove that they have a statutory excuse defence.

Landlords will have to consider the new legislation before renting a property and the experts in our Housing Team can provide guidance to Landlords to ensure full compliance.

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Rise in legal action for contact with grandchildren

There has been a steep rise in the number of grandparents taking legal action to secure a role in the lives of their grandchildren.

Some try to acquire parental responsibility in cases where the parents are unable to cope or unwilling to take responsibility for their children. Other grandparents simply want to have contact with their grandchildren, which can sometimes become difficult due to acrimonious divorces or family disputes.

Grandparents wishing to acquire parental responsibility can apply for Special Guardianship Orders (SGOs).

The number of SGOs rose from 1,313 in 2011 to 1,931 in 2014, according to figures published in the Solicitors Journal. That's a rise of 47%.

Grandparents wishing to influence the upbringing of their grandchildren can also apply for Child Arrangement Orders (CAO). There were 2,517 applications from grandparents for CAOs in 2014, compared with 2,319 in 2011.

With family relationships becoming ever more complex and the pressures on parents constantly increasing, it's likely that more grandparents will wish to step in to ensure their grandchildren get the best possible start in life.

While the courts are reluctant to disturb the bond between parent and child, they will be prepared to allow a greater role for grandparents in certain circumstances if that would be in the best interests of the child.

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Woman hit by tax bill may set aside trust made in error

The High Court has set aside a trust that was drawn up in error and would have resulted in a woman having to pay a large, unexpected tax bill.

The case involved a woman who made a settlement on the advice of her father to protect her assets from her former boyfriend. Most of her assets came in the form of gifts from her father.

He bought her a property to live in with her son. She had very little money or earning power so her father loaned her the money to buy a second property, without selling the first, to create income.

The woman claimed that her father's intention was that the second loan should be repaid from the sale of the first property. The woman entered into a settlement to protect the two properties.

However, the document was not correctly drawn up and so she found herself facing an unexpected tax bill when the first property was sold.

It was only then that she realised that the transfer of assets into the trust would be a lifetime chargeable transfer for inheritance tax purposes, with additional 10-yearly charges, and entry and exit costs.

This was completely the opposite of what she had hoped to achieve so she applied to the court to have the settlement set aside. The court held that the woman had misunderstood what she was doing and had failed to appreciate that there were adverse tax consequences. In the circumstances it was right that the settlement should be set aside.

Trusts can be a very useful way of protecting assets and reducing tax burdens but they have to be drawn up carefully or they can cause unforeseen consequences as in this case. It is important to seek legal advice to ensure the trust does exactly what you want it to do.

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