

YOUR FIRM'S LOGO can go here

We can design these newsletters using your firm's corporate colours and artwork,

Autumn
2010

Use newsletters like this to send to your private clients

What can you do if you are left out of a will?

It can be devastating to be left out of a will. It's not just the loss of an inheritance but also the thought that a loved one such as a parent actually decided to cut you off or leave you far less than you were expecting.

There are several reasons why this might happen. The increase in the number of second and even third marriages makes life more complicated these days.

People making a will may have to weigh up the conflicting interests of their children against those of their second wife or husband. They may also have to consider the needs of their children from different relationships.

The result is that more and more of us choose to spread our wealth when we make our wills, even at the risk of family disputes. This has led to an increase in the number of people prepared to mount a legal challenge if they feel they've been treated unfairly. One of the main reasons for contesting a will is that the correct legal formalities were not observed.

The person making the will – known as the testator – must sign it in the presence of two witnesses. The witnesses must also sign the will confirming that they observed the testator adding his signature. The will can be signed on behalf of the testator if he is incapable of doing so himself but it must be in

his presence and under his direction.

The other main reason to contest a will is concern over the testator's state of mind. He must have testamentary capacity, which means he must know what he is doing and understand what the will is saying.

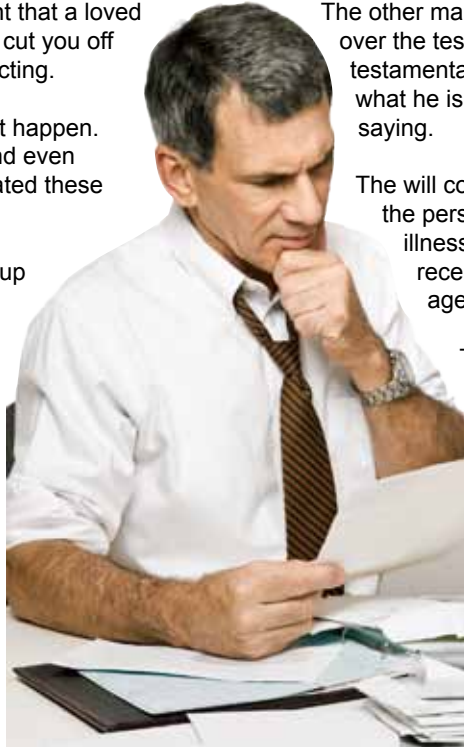
The will could be ruled invalid if it can be shown that the person lacked this capacity - usually through illness. This has become more of an issue in recent years as people live longer and develop age related illnesses such as dementia.

This can leave them prey to unscrupulous family members or even carers who may persuade them to change their will in a way they would not do if they were in good health. There should be no undue influence from anyone trying to benefit from the will. If you can prove there was undue influence then the will would be ruled invalid.

A will can also be contested if you believe it has been forged, although that can be difficult to prove.

If you wish to mount a challenge then you should contact a solicitor who can enter what's known as a caveat at the Probate Registry to prevent the will taking effect while your case is considered.

Please contact us if you would like more information or advice



Man wins half share of ex-partner's home – 17 years after separation

A man has won a half share of his former partner's home – even though the couple separated 17 years ago and she had paid the mortgage during that period.

The couple had bought the property in 1985 in joint names and had joint beneficial interests. The woman had provided the deposit and the mortgage payments were shared.

The man moved out in 1993 when the couple separated. The woman remained in the house with their two children and made all the mortgage payments herself.

Twelve years later, the man asked for his half share of the property. The woman responded by seeking a court declaration that she owned the entire



beneficial interest. The court eventually decided on a 90/10 split in her favour.

However, that ruling has been overturned by the Court of Appeal. It held that the property had been bought in joint names.

That had created joint beneficial interests and the couple had not done anything to change that when they separated.

The passage of time alone was not enough to displace the man's beneficial interest, even though the woman had paid the mortgage and covered all the maintenance costs.

If the couple had intended that his interest should diminish after separation then they should have taken steps to make that happen. They did not do so.

The court added the advice that couples buying a home, especially if they are not married, should consider what would happen to their beneficial interests if they were to separate.

Please contact us if you would like more information about the issues raised in this article.

Forced retirement at 65 to be scrapped next year

From October next year, your employer will no longer be able to force you to retire just because you've reached the age of 65.

The Government is scrapping the Default Retirement Age (DRA) which means thousands of people will be able to continue working unless their employer can show that there are valid reasons for obliging them to retire.

These reasons would have to relate to the nature of the work. For example, an employer might be able to show that an older employee could not carry out the tasks required of certain jobs such as police or fire officers.

Ministers are now beginning a consultation process on the issue but have already outlined the timetable for phasing out the DRA. It means that from

6th April 2011, employers will no longer be able to issue any notifications for compulsory retirement using the DRA procedure.

For the period between 6th April and 1st October 2011, only people who were notified before 6th April 2011 and whose retirement date is before 1st October 2011 can be retired compulsorily using the DRA.

After 1st October next year, the DRA can no longer be used to oblige employees to retire. If employers wish to retire an employee after that date they will have to show that their reasons are objectively justified.

Pensions Minister Steve Webb said: "Many older people want to work after age 65 and have a wealth of skills and experience that are not being used. We



want to get rid of the Default Retirement Age so that if they want to work they can do so. By spending longer in the workforce they can also have a better pension in retirement."

Please contact us if you would like more information about any matters relating to employment law.

Father who owes £78,000 maintenance prevented from selling his home

A father who owes £78,000 in unpaid maintenance has been prevented from selling his home.

It was feared that he wanted to stop the Child Maintenance and Enforcement Commission (CMEC) from taking the property to settle his debt.

The man, who cannot be named for legal reasons, has paid nothing to his former partner for nearly 12 years. He failed to respond to letters and phone calls from the Child Support Agency (CSA) which is now part of CMEC.

The case is the first to be brought under new powers introduced in the latest child maintenance legislation. CMEC applied to the High Court to impose an order preventing the sale.

The orders are designed to stop parents putting assets in the names of relatives and new partners as a way



of avoiding their duty to provide for their children.

The Chair of the CMEC, Dame Janet Paraskeva, said: "Step-by-step the Commission is closing the escape routes for parents who think they can cheat their children out of money from which they are entitled to benefit. No longer can houses, cars and other valuable assets be sold off quickly to prevent the CSA taking possession of them. Those who

selling his home

cynically transfer the legal ownership of property into the names of their new partners risk having those transactions reversed."

The new powers have been welcomed by the family lawyers association, Resolution.

CMEC has also begun Order for Sale proceedings against 500 properties belonging to parents who have failed to pay maintenance despite repeated warnings. The prospect of losing a home has proved very effective in persuading indebted parents to settle.

So far, more than £2m has been recovered but fewer than 15 properties have actually been taken and sold.

Please contact us if you would like more information about family law issues.

Protection against discrimination is extended

The new Equality Act will give people more protection against discrimination in the workplace and in premises where they buy goods and services.

The Government has announced that the Act will take effect in October as planned, although not all the new measures will be introduced at the same time. The Act makes it illegal to discriminate against a wide range of people who have what are described as "protected characteristics".

These characteristics are disability, gender reassignment, pregnancy and maternity, race – including ethnic or national origins, colour and nationality, religion or belief, sex and sexual orientation. There will be a slightly different way of defining disability which will extend protection to more people.

It will be against the law for a restaurant to ask a mother to stop breastfeeding her baby or to move to a more private part of the premises. With the exception of pregnancy and maternity, the protection also applies if a person is unfairly treated because they are wrongly perceived to have a particular characteristic. This might apply, for example, if a person is discriminated against because they are perceived to be gay when in fact they are not.

The protection also extends to people who are treated unfairly



because they associate with someone who has a protected characteristic.

The Act also introduces several changes relating to employment law and the workplace. For example, the Act develops the concept of indirect discrimination, which can occur when there is a rule or policy that applies to everybody but creates a disadvantage for employees with a particular protected characteristic.

As with goods and services, there can be no discrimination relating to perception or association.

There are also changes relating to harassment and victimisation, and the Act introduces the concept of harassment by a third party. This means that employers are potentially liable for harassment of their staff by people they don't employ.

Not all the changes will be implemented at the same time and the Government is still considering its position on some of the equal pay measures outlined in the Act. Ministers are expected to offer more guidance over the coming months.

Please contact us if you would like more information about any of the issues raised in this article.

Injury victims face 'shameful pressure' from insurers

Insurance companies have been accused of pressurising accident victims into accepting reduced compensation awards before they get independent legal advice from their own solicitor.

The Association of Personal Injury Lawyers (APIL) says insurers can approach victims within days of the accident when they are often confused and vulnerable.

The high pressure tactics have become so widespread that APIL has sent a dossier to the Financial Services Authority highlighting several cases where insurers have tried to settle claims at far below their true value, considering the nature and extent of the injuries involved.

Muiris Lyons, the president of APIL, said: "We have heard about quite shameful pressure to settle being brought to bear on vulnerable and injured people.

"The insurance industry is now euphemistically calling this 'third party assistance', but what many people won't realise or remember, often because they are shocked and vulnerable at the time, is that insurers' primary duty is to their shareholders, not the injured person. This obviously



puts them in direct conflict with the victim."

One of the main problems is that most people know little about the compensation system and so are unable to assess whether a settlement offer from an insurance company is fair and reasonable.

That is why it is essential that anyone injured in an accident through no fault of their own should seek advice from a solicitor who specialises in personal injury claims. That way they can be sure that they will be properly compensated. They should not have to pay for this independent legal advice as the solicitor's fee can be recovered from the other party and their insurers.

Please contact us if you would like more information about making a personal injury claim.

Tax change could 'impact on wills'

Recent changes in the tax regime could have an adverse effect on many trusts and wills.

The new Government's first budget increased Capital Gains Tax (CGT) to 28% for higher rate taxpayers. The Law Society has warned that this new rate "will charge any gains made while an estate is being administered and also gains for the duration of a trust".

Will trusts, which are often created for the benefit of children, are particularly vulnerable to the changes.

A spokesman for the Law Society, Robert Heslett, said: "There is a real danger of trust assets being eroded through a combination of income tax at 50%, CGT at 28% and the impact of the changes to the inheritance regime introduced in 2006.

"Personal representatives, trustees and anyone else appointed to set up a trust and settle assets within it should urgently seek advice from their solicitor to ensure that arrangements are structured as tax efficiently as possible for the benefit of these vulnerable beneficiaries in the light of these new developments."

Please contact us if you would like more information about wills and trusts.

This space could be used to promote your firm

We could add another one of our legal news stories here, or you could use a panel like this to give more details about your services.

Occasionally, you might want to advertise a surgery or seminar.

We can include that for you at no extra cost.

The choice is up to you.

'Secret documents' outlawed in divorce cases

A landmark ruling by the Court of Appeal means that couples in divorce cases will not be allowed to use secretly obtained confidential documents to prove their partner is withholding assets.

The case involved a wealthy couple who were in the middle of divorce proceedings. The woman's brother downloaded information which gave details about her husband's financial affairs.

They alleged the documents proved the husband was hiding the true extent of his wealth so he wouldn't have to give it to his wife as part of the divorce settlement.

The husband took legal action saying the brother had no right to download his private documents. He won his case in the High Court which granted an order that the documents should be handed back.

That decision has now been upheld by



the Court of Appeal. It has never been permissible to obtain documents by force such as by breaking into a cabinet or an estranged partner's home. However, until now, there was a practice known as the Hildebrand rules which meant that if a husband or wife came across a confidential document proving that their partner was withholding money then they could use it as evidence in court.

That practice must now stop following the Appeal Court ruling. Many legal

commentators believe the Hildebrand rules were in need of clarification due to the rapid rise in technology which means information can be accessed from emails or downloaded from a computer.

In giving his judgment, Lord Neuberger said: "It follows that nothing in the so-called Hildebrand rules can be relied upon in justification of, or as providing a defence to, conduct which would otherwise be criminal or actionable."

The judgment means that if a husband or wife in a divorce case take documents without permission, they could face heavy costs or even criminal proceedings.

They can still, of course, apply for a court order to obtain documents or freeze assets.

Please contact us if you would like more information about this or any aspect of matrimonial law.

Housing market experts want to reform the system

Some of the main professional organisations involved in the buying and selling of homes have been discussing ways to provide a better service.

The Building Societies Association (BSA) chaired a meeting which included solicitors, estate agents, surveyors and consumer bodies to develop strategies to improve the system.



Most professionals welcomed the Government's decision to abolish HIPs but said more still needs to be done. Christopher Hamer, the Property Ombudsman, said: "It is clear that a lack of consumer

understanding and poor information on a wide range of issues from roles, terms of business and the process overall place consumers in a weak position."

The Law Society says that it has always supported the idea of buyers receiving information up front about a property they wish to buy but HIPs had not properly addressed the issue.

It said: "Concern about the additional cost to sellers and lack of benefit to consumers has prompted the Law Society to propose a complete and comprehensive set of documents, prepared by a solicitor, who has the benefit of specialist legal training and professional responsibility. The Society is recommending that the information

be provided in a standard format to bring proper value to consumers and improvements in the process whilst at the same time reducing cost.

"The marked increase in property fraud, including registration fraud and mortgage fraud, means that the role of the solicitors as the gatekeeper in the process assumes a greater importance.

"Solicitors can help consumers understand the residential conveyancing process, the role of the solicitor and others in the buying and selling market and to make informed choices."

Please contact us if you would more information about buying and selling a home.

For more information about our services, please visit: www.yourfirm.co.uk

Your Firm's Name
S O L I C I T O R S

The bottom portion of the last page can be customised to your firm's requirements, eg photos, legal services, contact details, quotes etc at no extra cost.

List your services here.
For example:

- Residential Property
- Personal Injury
- Road Traffic Claims
- Wills, Inheritance & Trusts
- Employment
- Family & Mediation
- Disputes

Meet the partners



Partner's Name



Partner's Name



Partner's Name



Partner's Name

F. 012 345 6780

Your address here, One Town, County AB12 3CD

0123 456 789

E. mail@yourfirm.co.uk

www.yourfirm.co.uk

This newsletter is intended merely to alert readers to legal developments as they arise. The articles are not intended to be a definitive analysis of current law and professional legal advice should always be taken before pursuing any course of action.