

Legal Update

Late Autumn/Winter
1999

SHARMAN & TRETHERWY
SOLICITORS
Established 1809

Newsletter for Private Clients of SHARMAN & TRETHERWY

INHERITANCE TAX - LIMITS

An early nineteenth century speaker in the House of Commons described the Chancellor of the Exchequer as a man who “is entrusted with a certain amount of misery which it is his duty to distribute as fairly as he can”, (Robert Lowe, H of C, 11 April 1870).

A century later nothing much has changed - simply the financial limits subjected to taxation and the ways and means of avoiding such “misery”.

During your lifetime you can plan ahead so that your final estate upon death pays as little tax as is legally possible. Lifetime gifts are one way of avoiding tax. By making gifts of money or other property during your lifetime you may be able to bring the value of your estate (including your home) below the current Inheritance Tax (IHT) threshold of £231,000. IHT is charged at 40% on the balance over £231,000.

Unlimited gifts of money or other property can be made to individuals during your lifetime, provided that you survive seven years after the date of the gift. Should you have the misfortune to die before these seven years are completed then “Tapering Relief” may apply. This is a sliding scale of reducing taxation rates that may apply to your taxable estate.

You can also make gifts of up to £3000 free of tax in each

tax year; if this exemption is not fully utilised in any one year, then you are able to carry forward the unused part for a single year. Both husband and wife are entitled to use this exemption. Gifts between husband and wife are exempt from tax both during life and on death - a somewhat different emphasis on equal opportunities!

Financial gifts given upon marriage are exempt from tax but the maximum varies according to the donor - £5000 if given by a parent; £2,500 if by a grandparent and £1000 by others.

Many people make tax saving provisions in their wills. Again both husband and wife are entitled to give away the balance of their nil rate band of £231,000 upon death. Again, if a husband or wife inherits the entire estate and this surviving spouse believes that there are surplus funds, then he or she can gift £231,000 or less to their children by rewriting a will. However, this requires a Deed of Variation to alter the will and must be effected within two years of death.

Tax planning utilising any of the above methods or by a Trust needs a great deal of thought, advice and assistance, if you want to achieve the required outcome. This is just a brief outline and you must remember that taxation thresholds are always liable to change at each Budget.

For further information and advice please contact Jonathan Howe on 01234 30 30 30 or Anthony Northey on 01525 750 750.



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INVESTOR IN PEOPLE



POWERS OF ATTORNEY

An increasing number of people are appointing others to manage their affairs for a variety of personal reasons, but especially where there is the possibility of incapacity. Similarly, many people seek to safeguard the assets of their elderly or incapacitated friends and relatives by utilising powers of attorney.

An attorney is a person empowered to legally act, carry out transactions, sign documents, and manage financial matters, on behalf of another. An attorney can be anyone over the age of eighteen, who is not bankrupt at the time of appointment. Solicitors can act as an attorney and can charge for their services.

Whilst there are ordinary powers of attorney, the most common and popular form is the Enduring Power of Attorney (EPA). By an EPA individuals can appoint a person to manage their affairs should they become mentally impaired in the future. An EPA must be made whilst the Donor (the person making the EPA and appointing the attorney) is still mentally capable and it will endure despite mental impairment. An ordinary power of attorney becomes invalid should the Donor become mentally incapacitated.

A Donor must also be over the age of eighteen and he or she must follow the required format. If there is any doubt as to the mental capacity of the Donor then medical and legal advice may be required.

The Donor may restrict the attorney to specific actions when drawing up the EPA. The appointment of joint

attorneys is possible and is potentially useful in case one attorney dies.

Special provisions can be made for those who cannot physically sign, make a mark or cannot see. EPAs no longer have to be sealed - only signed and witnessed. Both the Donor and his or her attorney can change their minds; the Donor can cancel the EPA at any time provided that he or she is of sound mind; an attorney can give notice of disclaimer.

When the Donor becomes or has become mentally incapacitated, then the attorney must register the EPA with the Public Trustee before he or she can act or continue to act. Until this is done, the powers of the attorney are limited to maintaining the estate and preventing loss. Thus speed is often critical.

Once the EPA is registered with the Public Trustee the Donor cannot change his or her mind. An attorney must let the Public Trustee know if he or she no longer wishes to continue as attorney.

Any objections to such registration can be made to the Court of Protection who may have to adjudicate. However, there are certain rules for objections and relatives have no automatic right to be named as attorneys.

For further information and advice please contact Jonathan Howe or Christine Allen (Senior Probate Assistant) on 01234 30 30 30 or Les Exton (Legal Executive) on 01525 750 750.



THE WOOLF AT THE DOOR (OF THE COURTS)



Lord Justice Woolf has given his name to the reforms of the civil law system of England and Wales. As a result of his recommendations and the subsequent public response, the government has introduced new rules for the County and High Courts. These rules are meant to simplify the Civil Procedure Rules and came into force at the end of April this year.

The main aim is to clarify and speed up the processes of taking a case through the courts as well as

abolishing certain legal terminology wherever possible. Another aim is to settle cases before they reach court by promoting Alternative Dispute Resolution procedures and other initiatives.

Such initiatives include mediation through the Alternative Dispute Resolutions measures; strict timetables; pre-action guidelines; the extension of conditional fees for wider areas of the law as well as introducing computers and new technology into the courts in order to expedite cases.

Going to court can be a long, drawn out, slow and costly procedure; anything that can be done to circumvent this must be to the client's advantage. The one thing that remains the same is that one party must win and one party must lose the case - however, the Woolf Reforms aim to blur the lines somewhat and to remove the confrontational approach.

This can only be good news - the house (and the courts) need not be blown down.



BUYER BEWARE

- alerting you to some potential pitfalls.



HOME INCOME PLANS

These allow you to unlock the capital value of your home and provide you with some income or a lump sum for your retirement.

There are various schemes which vary according to your age and whether you need income or cash. Some plans require you to sell, rather than mortgage your home and you may have to buy an annuity rather than obtain a cash lump sum.

The main things to watch out for are the arrangement fees and charges. The market is not yet regulated and it is essential that you seek legal advice if you want to protect your position and /or if you want your children to inherit your property.

ACCOMMODATION FEES

Various steps can sometimes be taken in order to avoid home care costs charged by the local authority. Ownership of assets above £16,000 will mean that the individual - or his or her relatives has to meet such costs in full.

There are potentially many disadvantages in making gifts and setting up trusts and legal advice should always be sought.

FUNERAL PLANS

Funeral plans allow you to pay for your funeral costs prior to death. Whilst most people prefer to leave such costs to be paid out of their final estate, funeral plans are pre-paid and are therefore exempted from any means testing for residential home care costs.

RESIDENTIAL CONVEYANCING

There is a very competitive marketplace for residential conveyancing and, as with most things, you get what you pay for.

The process of conveyancing - the transfer of the legal title to a freehold and leasehold property - involves all or some of the following:

- checking that there is a valid title to the property;

- discovering if there are any legal restrictions affecting the property such as boundaries, rights of way, alterations or the right to carry out trade or business from the prospective property;
- discovering if there are any legal charges (first calls) upon the property or land;
- checking with the local authorities (searches) to see for example, if there is any planning application in the pipeline which could adversely affect the property value and a subsequent sale;
- achieving key deadlines to ensure that the deal does not fall through;
- dealing with financial arrangements and loans and forwarding monies, including mortgage redemption to relevant parties; registering the buyer as having title to the property;
- experience to spot anything that is out of the ordinary; making the appropriate enquiries of the seller's solicitor;
- acting as mentor, guide and smoother of fevered brows in what can be a stressful process for buyer/seller.

This is what you are paying for; the cheapest deal is probably not the best value.

The other point to look out for is that the fees quoted by all law firms and conveyancing organisations are for legal fees only. Other costs such as local authority searches, land registry charges and Stamp Duty (if applicable) are extra costs and will be passed on directly to you.

Clearly there is a great deal more to residential conveyancing than this brief and simple article might imply. The cheapest quote is invariably poor value. At Sharman & Trethewy we will provide you with a written estimate in advance and a first class personal service.

For all your Residential Conveyancing needs please contact John Moore or Simon Hopwell or Andrea Briggs on 01234 30 30 30 or Les Exton (Legal Executive) on 01525 750 750.

In the Firm

NEW FACES AT BEDFORD OFFICE



Pam Bhachu is now part of the Family Law Department of our Bedford office.

Educated in Bedford and in London, Pam has

extensive experience of litigation work, but always with an emphasis on matrimonial, Children Act and wardship matters. She is also an experienced Immigration lawyer. She joins us from another Bedford firm having previously trained and worked in a London law firm. However, Pam has found time away from legal work in order to travel in Africa.

Simon Campbell

has also joined our Bedford office where he deals with criminal work, including representation and advocacy in



the Magistrates Courts throughout the County. He is also skilled in police station representation where he may be called upon to deal with interviews after arrest, when clients answer bail and for identification parades.

Away from work, Simon is a keen sportsman and played as a junior for the Bedfordshire County Cricket side whilst still at Kimbolton School and was Captain of his university badminton, cricket and golf teams.

STOP PRESS

Andrea Briggs, an Assistant Solicitor, has just joined our

Residential Conveyancing Department and Christine Allen has just joined our Probate Department as a Senior Probate Assistant.

FAMILY LAW TEAM



Shown here are the members of our newly expanded Family Law Team led by Robert Colling. Pictured from left to right are Sue Jackson, Nick Rees, Lesley Kendrick, Robert Colling and Pam Bhachu. Most are members of the Law Society's Children and Family Law Panels and Sue Jackson is an experienced Family Mediator.

TWO CENTENARIES

Sharman & Trethewey have been based in **Bedford** at 1 Harpur Street for a hundred years and we still have the original Lease dated 1899 to prove it. It is also one hundred years since we took over the **Amphill** practice of John Wright. We, of course, fully intend to be here for the next one hundred years!

FURTHER LANDMARKS

Partner **Ian Codrington** has been with the firm 40 years, Anthony Northey has been a partner for 25 years and **Simon Cocksedge** has been with the firm for 25 years. In all a total of 90 years between them.

The firm is featured in the recently published "Memories of Bedford". A copy of the photo of the current partners which appears in it is reproduced below.



FUNDRAISING - A GIFT OF LIFE

The single most urgent problem facing relief agencies is the provision of safe drinking water and emergency supplies.

Amphill office staff have provided supplies to fill 2 Aquaboxes, through the Amphill Rotary Club, for refugees in Kosovo. Each **Aquabox** provides equipment capable of purifying up to 1000 litres (5000 cups) of polluted water, thereby providing safe and pleasant water to drink.

Since 1998 over 9000 **Aquaboxes** have been distributed and over 7000 sent overseas. **Aquaboxes** include a selection of warm clothing as well as essential hardware items.

AND FINALLY...

Anthony Northey - our partner based in the Amphill office has been elected President of the Amphill Rotary Club for 1999/2000.



This bulletin is published for the general interest and benefit of readers and is not intended to be a definitive analysis of legislative or other changes. Professional advice should be taken on specific issues before any course of action is taken.

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