



Your quarterly bulletin on legal news, views and advice from Quality Solicitors Rose & Rose

MOVING IN WITH YOUR PARTNER? TAKE ADVICE FIRST

Entering into informal property transactions without the benefit of legal advice is a recipe for disaster, as a young man found out when his relationship with his girlfriend ended acrimoniously and she insisted that he had no interest in the house that they had shared.

The man had agreed to the property being held in his girlfriend's sole name because he had a poor credit history and was concerned that he would be rejected by the mortgage provider. After they split up, he applied to the Land Registry to register his beneficial interest in the property, but that was resisted by his ex-girlfriend.



It took court proceedings to establish that he did have a legal interest in the property. In upholding his claim to a stake in the property, the First-tier Tribunal (FTT) noted that he had paid for a new boiler and double glazing. He had, through his father, also paid

half of the £20,000 deposit on the purchase price.

In those circumstances, the FTT was satisfied that there had been a common intention that he should have an interest in the property. The extent of that interest has yet to be assessed.

If you are buying a property with someone else and it is to be held in their name for whatever purpose, you can take steps to make sure that any agreement you have made regarding the equitable ownership of the property is enforceable without the need for an expensive court hearing. Contact us for advice.

NEED OVERCOMES EQUALITY CLAIM IN DIVORCE SETTLEMENT

With new guidance having been issued regarding the interpretation of 'need' for the purpose of financial settlements on divorce, a recent case shows how the courts have been moving away from a rigid adherence to the principle of 'equality' in the division of assets.

It involved a wealthy couple who had in excess of £10 million in assets when they commenced divorce proceedings 14 years after they married. The ex-husband argued that his former wife's claim for a half share of

the assets was not appropriate because he already owned their care home business when they married.

He claimed the business was worth an estimated £5.6 million when they married. His ex-wife claimed that it was almost valueless and was only restored to a solid financial footing by virtue of her hard work. She argued that a 50:50 split of assets would be fair, since their wealth had been built up jointly and claimed that her former husband had promised her a 50:50 split of assets.

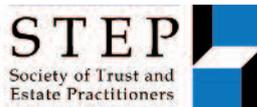
The Family Court did not accept her argument and decided instead that the division should be based on her appropriate level of need. The judge ruled that the ex-wife should receive £1 million to provide housing and £1.3 million to provide income.

A satisfactory settlement in any divorce will depend on having experienced and expert legal representation.

We are here to help.

I just wanted to let you know that Andrew Perryman has just dealt with a very stressful and complicated divorce case for me over the past 22 months. Throughout the preparation and Court Case, Andrew has always been extremely helpful, professional and sympathetic. He has always been available when I have had any queries and responded immediately to whatever has been needed. Thank you for the excellent service that Andrew and his team including Zubair, etc. have provided. I would be happy to recommend Rose & Rose Solicitors in the future. With kind regards – Robert Shonfeld

Andrew Perryman





GIFT GIVING – GUIDANCE FOR ATTORNEYS AND DEPUTIES

When a person can no longer manage their own financial affairs, these will be managed either by their attorney (if a power of attorney has been made) or by their deputy if an application has been made via the Court of Protection in the absence of a power of attorney.

Once the appointment of attorney or deputy has been made, their responsibility is to act in the best interests of the person whose finances are being managed.

This is a strict burden and there are numerous instances of attorneys and deputies being taken to task for inappropriate actions.

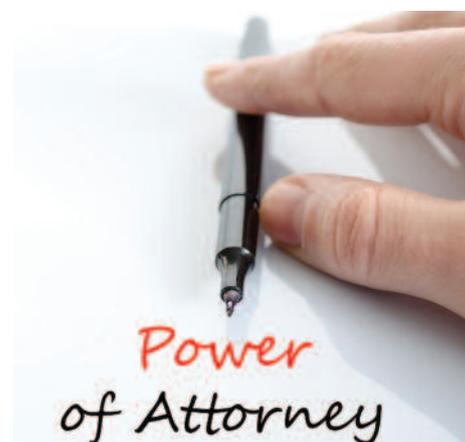
One of the biggest problems is that of making gifts. The person whose affairs are being managed may want to make gifts, or

may traditionally have made them, and this can create a conundrum for the attorney or deputy as to whether gifts should be made and, if so, at what level.

Fortunately, the Office of the Public Guardian has issued a booklet called 'Giving gifts for someone else', which provides guidance in such circumstances. This can be downloaded from the UK Government website.

The basic rule is that if the person for whom you act has mental capacity, they must decide whether to make a gift or not. Mental capacity is subject to quite strict legal tests and guidance is provided regarding these.

If the person for whom you act does not have mental capacity, their 'wishes, views and values' come into play, as do other criteria such as affordability and the views of friends and family.



For advice on your rights and responsibilities as an attorney or deputy, or to discuss creating a power of attorney to apply should you no longer be capable of managing your own affairs, contact us.

MY HOME IS MY PENSION



Returns on private sector pensions have been in the doldrums for a long time, and with interest rates (on which annuity rates depend) firmly stuck at historically low levels, an increasing number of people are unable to rely on their pension savings to secure their post-retirement lifestyle.

However, for property owners, continuing increases in house prices over time, plus low mortgage rates, have meant that many have

steadily built up equity in their homes. Indeed, a substantial majority of homeowners now have more wealth tied up in property than they do in their pensions.

According to insurer Aviva, half of all people in the UK over 45 see their home as being a source of income in retirement, with an average expectation that downsizing will release £57,000 of capital.

Aviva also revealed that more than a million people over the age of 65 are still working and that two thirds of retirees who have insufficient savings to fund their retirement lifestyle only realised that after they retired. Among the 'millennials', nearly half of graduates believe that their degree has not furthered their career and 37% regret having studied at university because of the debt burden that has resulted. Aviva also reported that the 18-34 age group has an average

monthly disposable income of £156, so one potential spoke in the wheel of a strategy to use the equity built up in property to finance retirement is the difficulty young people face in saving enough money to finance a house purchase.

The ramifications of the changes in the economy over the last two decades in particular have been considerable. As the findings above show, there are substantial generational differences which have significant social impact and which pose formidable problems for families as a whole.

For advice on safeguarding family wealth or helping a family member onto the property ladder, contact us.

My work colleagues told me a good solicitor is key factor when it comes to buying a house and I can agree with that now. I will spread the word and recommend Rose & Rose to potential clients in the future. Johan

5th September 2016

Rikki Bansoodeb





DIVORCEE WHO REFUSED TO LEAVE MATRIMONIAL HOME PUNISHED

As we have already seen above, judges possess a battery of powers to enforce compliance to Court orders. In one case, a divorcee who barricaded himself into his former matrimonial home in order to prevent its enforced sale was given ten days to move out – or go to prison.

The sale of the £500,000 farmhouse had been ordered so that the proceeds could be divided between husband and wife as part of their £6 million divorce. However, over a prolonged period, the husband had refused to leave and was said to have surrounded the property with barbed wire.

A family judge ultimately imposed a six-month suspended prison sentence after finding the husband in contempt of court. He was warned that the sentence would be activated if he did not move out by a particular date. In challenging that decision before the Court of Appeal, his lawyers pointed to his mental health difficulties and argued that he had not knowingly or wilfully breached the order. The sentence imposed was also said to be disproportionate.

In rejecting his challenge, however, the Court acknowledged his health problems and protestations, but these did not alter the fact that he had deliberately

defied the order for a considerable period. He was given ten days to vacate the property or face arrest and immediate imprisonment.

Obtaining compliance with judicial rulings regarding financial settlements on divorce can sometimes be problematic. For assistance in making sure court orders are complied with, contact us.

SUBJECTED TO GROUNDLESS LITIGATION? YOU COULD WIN COMPENSATION

A ground-breaking Supreme Court decision has for the first time opened the way for compensation claims by those who are subjected to groundless civil proceedings which have been brought maliciously without reasonable or probable cause.

The case concerned a businessman who was sued by a leisure company for alleged breach of fiduciary and contractual duties following his dismissal as a director. The claim was later withdrawn and the businessman contended that the proceedings had been part of a campaign by a former colleague to do him harm. He launched a claim for malicious prosecution but his case was struck out by the High Court.

In allowing his appeal against that decision, the Supreme Court noted that claims for malicious prosecution had long been familiar in the criminal context. Extending the cause of action to civil cases, the

Court noted that it would be instinctively unjust should those who are maliciously subjected to civil proceedings without reasonable cause not be entitled to compensation for the harm intentionally caused.

Those who launch such proceedings in the knowledge that they are without foundation, or to achieve some collateral benefit to which they have no right, are deliberately misusing the legal process. The concept of malice also embraces those litigants who are indifferent as to whether their claims have any foundation. In the circumstances, the Court directed a full hearing of the businessman's claim.

If you are the subject of a legal vendetta by someone, this decision means that it may be possible to claim compensation. Contact us for advice.



Richard Turney

Richard Turney was excellent in every way. Deborah C

8th June 2016

SDLT CLARIFICATION SOUGHT ON MIXED-USE PROPERTIES

Owners of mixed-use properties will know that the Stamp Duty Land Tax charged on commercial properties is not the same as that charged on residential properties.

There is also considerable confusion over the definitions used in different parts of statute law as to what 'commercial' as opposed to 'residential' property is and over details relating to completion and occupation of buildings, planning status and the treatment of land associated with buildings.

The Chartered Institute of Taxation has been in discussion with HM Revenue and Customs in a bid to iron out some of the uncertainty in these areas and a consultative process is now in train with a view to issuing revised guidance in the near future.

We can assist you with any property law issue.



It is not uncommon for employees' contracts of employment to expressly incorporate the staff handbook, although much of its contents will refer to policy matters rather than having contractual status.

The handbook, which was given to all new staff, stated that those employees who had more than 21 days off sick in any 12-month period would first be spoken to informally by management. However, if such absences persisted, disciplinary proceedings could result. The DfT subsequently sought to unilaterally change that position by reducing the trigger point from more than 21 days' sickness absence to just five days.

The DfT argued that the clause was merely a note for guidance or an indication of good practice. However, after an employee complained, a judge ruled that it constituted a legally enforceable contractual term which could not be changed without the consent of employees.

In an important decision for public sector workers (*Department for Transport v Sparks and*

Others), the Court of Appeal has ruled that a clause in a staff handbook, relating to the policy of the Department for Transport (DfT) in respect of absences on sick leave, formed part of its employees' contracts.

It is vital to seek legal advice when drafting a staff handbook so that it is clear which provisions may be relied upon by employees as being contractual. We can advise you on your individual circumstances.

AND FINALLY.....

Congratulations to Nick Roots, from our litigation department, who has just won the Irish Stock Car Championship and came 3rd in the British Championship.

This is adding to his 5th place in the World Championship earlier in the year.

Well done Nick! (By the way, we also deal with motoring offences!)



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