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Introduction

Our Autumn Newsletter contains a topical feature on **Nil Rate Band Discretionary Will Trusts** following this year's decision in the **Phizackerley case**. The message is that Nil Rate Band Discretionary Will Trusts still work. We hope that you will find this and the other articles of interest.



Nil Rate Band Discretionary Will Trusts and the Phizackerley Case

Wills incorporating "Nil Rate Band Discretionary Trusts" have been used by Hopley Pierce & Bird for some time now to minimise the payment of Inheritance Tax (IHT) on death for our clients.

Their use has increased substantially as a result of the sustained rise in house prices over recent years taking clients who did not think themselves wealthy into the IHT bracket.

IHT is generally payable on estates whose value exceeds **£300,000.00 (figure for Tax Year 2006/2007)** and a saving of up to **£120,000.00 in tax** can be made.

There has been some adverse press comment concerning these schemes following the decision in **Phizackerley v. HMRC [2007]**. However its significance has been overstated. **A Nil Rate Band Discretionary Trust Will** is still an effective way of reducing IHT liability provided:

- The Will is properly drafted
- The resulting Trust on death is set up and administered in a proper manner

If you are married or civil partners and your combined estates exceed **£600,000.00** then you should consider making **Nil Rate Band Discretionary Trust Wills**.

If you wish to discuss IHT planning, Nil Rate Band Discretionary Will Trusts or Wills generally please telephone on 01978 315104 to arrange a meeting with **Peter Ridgway**.

HIPs Introduced

The key development this year has been the introduction of **HIPs (Home Information Packs)**. As from **10th of September 2007** houses with 3 bedrooms or more require HIP packs to be commissioned before they are marketed. Keep yourself informed by visiting our website and viewing our HIPs updates. Contact us if you require us to provide you with a **"fully portable" HIP**.

Race for Life

Jacqui Marsland completed the **Race for Life** on **24th June** and we are pleased to report that she raised **£155.00** for Cancer Research. Thank you to those of you who sponsored her.

CANCER RESEARCH UK



Note for Clients

In addition to publishing our Newsletters we are building a library of informative Fact Sheets on various topics which you can access via our website which is currently being revamped.

The contents of this Newsletter is for general information only and whilst every effort has been made to ensure that the information is accurate at the time of printing no action should be taken without obtaining appropriate professional advice. © Hopley Pierce & Bird 2007

THE MYTH OF THE COMMON LAW WIFE/HUSBAND AND TIPS ON BUYING A HOME TOGETHER

It is a common misconception that living with someone for a period of time confers a legal status of a “Common Law Wife” or “Common Law Husband” which in turn gives certain legal rights if and when the relationship breaks down. This is not correct although the Law Reform Commission is looking into the possibility of securing unmarried couples divorce-style rights in the future. At this point in time however your rights as one half of a cohabiting couple are based on the complicated Law of Trust.

The present position is that if you move into a property with your partner that is held in your partner's sole name you face an uphill struggle to show any entitlement to the proceeds of that property should the relationship break down. The Courts currently have limited power to use their discretion in awarding settlements for unmarried couples and they can take into account such factors as financial contributions, the reason why the home was acquired in the sole name of one party, and any discussions between the parties. The problem is that people's recollections of discussions fade with time and of course you are left with the scenario of one word against another if there is disagreement. It is therefore vitally important that you have a Cohabitation Agreement or Trust Deed drawn up if you are moving into a property without your name being on the title deeds. This can be as simple or as complex as your situation requires. It can provide that if the relationship breaks down you are entitled to a fixed percentage of the property, the repayment of any expenditure you have made in improving the property; or on the other hand, no claim whatsoever if that is the agreement you have made. A Cohabitation Agreement can also deal with other assets that you have e.g. bank accounts, debts and gifts that you receive.

If you are buying a property with your partner the fact that the property is in your joint names may still not offer satisfactory protection. Most people do not realise that you can jointly own a property as Joint Tenants or Tenants in Common. If you own as Joint Tenants then there is a presumption that the property is held 50/50. This is an initial presumption and the Courts can award you a different percentage if you can prove a contrary intention. Again this is difficult to substantiate as it is usually one word against the other.

Our advice is that when you are purchasing a property jointly you agree how the property is to be owned. It is possible to specify this in the Transfer or draw up a short Trust Deed to record your beneficial shares. This could be on a 50/50 basis or alternatively if for example one party is paying the deposit or paying a larger percentage of the mortgage you may wish to agree an unequal split of say 60/40 or 70/30. Another alternative is that you could make provision to have the deposit returned with interest and thereafter the net proceeds are split 50/50.

It is vitally important that you seek advice when purchasing a property or moving in with someone as it can avoid a lot of heartache, arguments and costs in the future.

If you are already living with someone and the property is either in your partner's sole name or the property is held in joint names but you have not specified your beneficial interest then it is not too late to draw up a Declaration of Trust and if necessary, a Cohabitation Agreement provided you agree.

As mentioned above the Law Reform Commission are looking to change this area of the law but any recommendations will need Parliamentary approval and as such it is likely to be several years before the position changes. You should therefore take the decision to protect your interests now.

If you require advice on this matter or other family problems please telephone our Family Helpline on 01978 315103 or email jm@hpblaw.co.uk



Estate Agents Revisited!

Since the Customer, Estate Agents and Redress Act was passed by Parliament on the 20th July 2007, it has been mandatory for all estate agents to join the ombudsman scheme. Until then it was voluntary! It is therefore an opportune time to remind ourselves of the types of agreements entered into with estate agents.

- If you sign an agreement which provides the agent with “sole selling rights” then the agent is entitled to his sale commission whoever introduces the buyer and even if the sale is completed after the agreement with the agent is ended.
- If the agreement is a “sole agency” then the agent instructed by you is the only agent with the right to sell your property. If you find a private buyer without any involvement of the agent then the agent will not be entitled to his commission, but it will be difficult for you to prove that this is the case (e.g. when there is a sign board in place) unless you have given the name of an interested buyer to the agent before you sign the agreement with him.
- Most agreements are on a “sole agency” basis but if you instruct more than one agent then they will each be entitled to their sale commission whichever agent introduces the buyer. If you wish to instruct more than one agent you should set up a “Multi-agency Agreement” but generally agents will insist on a higher percentage fee if you go down this route and some agents will not agree to enter into a “Multi-agency Agreement”

If you need further information about the Estate Agents Ombudsman's Scheme visit www.oea.co.uk.