

WINTER 2015

NEWSLETTER No. 15

WELCOME TO OUR LATEST NEWSLETTER

NEW MEMBER OF STAFF

Lily Marsh, who is our apprentice, joined us on the 1st of December 2015. She will be with us for initially 18 months, studying and learning about the different areas of law that we practice as well as office management. She will be working with us at the same time as studying for her college A-Level in Law at South Downs College in Waterlooville. Lily will be attending college once a week to support what she is doing with us and will be doing criminal law in her second year of College – this will help back up this route in her life, as she is going to carry on doing a job located around the Law after her time has come to an end with us.

In the spare time that Lily has, she likes to see her friends and family and also going to the cinema. She also likes going for meals because she gets to then socialise with everyone around her (friends or family). Lily's favourite things to do are walking her dog, Stan, shopping and going to concerts to see her favourite singers/bands live.

MACMILLAN COFFEE MORNING

Once again this year we had a very successful Macmillan Coffee Morning in September. The office was filled with the largest selection of cakes that we have had to date. We had the usual large number of visitors during the course of the morning, including the Petersfield Post whose photographer caught us in the act of tucking into some cake!

We are delighted to confirm that raised our largest ever total of £563.34 and would like to thank all of those who provided support for such a great cause.

LAND REGISTRY PROPERTY ALERT

Property Alert is an award winning free property monitoring service aimed at anyone who feels a registered property could be at risk from fraud.

Once you have signed up to the service, you will receive email alerts when certain activity occurs on your monitored properties, allowing you to take action if necessary.

Further information is available at <https://propertyalert.landregistry.gov.uk/>

EUROPEAN SUCCESSION REGULATIONS

The EU Succession Regulation came into force on 17 August 2015 for the estates of persons who die on or after that date.

Agreed in 2012, the regulation states that the jurisdiction and succession law applying to an individual's entire estate is determined by his last place of habitual residence, although it also gives expatriates an overriding right to elect for their estate to be governed by the law of their own country.

It is principally intended to resolve succession disputes caused by the large volume of migration between EU member states – although it is recognised that there are still unanswered questions about which jurisdiction's law will apply. However it also has implications for nationals of the three member states that have opted out – Ireland, Denmark and the UK – and for non-EU nationals, such as Swiss citizens.

Those affected include Swiss nationals whose last habitual residence was in an EU member state, and Swiss residents of any nationality who leave assets in an EU member state. Also affected are nationals of EU countries whose last habitual residence was in Switzerland and who elected for their own national law to determine succession.

The regulation does not define 'last habitual residence', but takes into account the length of time spent by the deceased in various countries.

The regulation also contains an exception from the habitual residence rule if the deceased, at the time of death, was 'manifestly closer connected' with a state other than the state of the last habitual residence. In such cases, the law of that other state applies. So, if a French national moves to Germany and dies there shortly after, French law is likely to apply. This exception was introduced to stop EU nationals moving to another jurisdiction just before their death in order to defeat the forced heirship rules of his or her native country. However, by doing so it has also introduced significant uncertainty.

However, the more general problem with the EU regulation is that the right of expatriates to choose the applicable law of succession is not absolute. It is not yet clear whether all EU member states will accept a choice of a law that does not provide for forced heirship rights'.

POST DEATH VARIATION (DEED OF VARIATION)

If you have received an inheritance within the last two years, you have a window of opportunity to consider how to make the most of it for the long term benefit of your family. Whether you want access to the assets yourself, or wish to use them to help your children (or grandchildren), a post-death variation can help.

The Government recently announced that it will review the use of post-death variations, though no specific changes to the law have yet been proposed, and any change is unlikely to take effect until the autumn, at the earliest. Nonetheless, you should not delay if you think a post-death variation may be useful to you.

A post-death variation (also called a deed of variation) is used for all sorts of different reasons. In the right circumstances, it allows a beneficiary of a Will (or intestacy) to re-direct their inheritance so they can still have access to the assets but without increasing the value of their estate for Inheritance Tax (IHT) purposes. The variation must be done within two years of the date of death. The variation will be 'read back' into the terms of the Will (or intestacy) for IHT purposes so that it is treated as if the deceased left the inheritance on the terms of the variation. By virtue of the reading back effect, the usual rule that you must survive a gift by seven years for it to be outside your estate for IHT

purposes does not apply to post-death variations. This means there is no 'gift on the clock' of the beneficiary, even if the beneficiary decides to use the inheritance to benefit his or her children (or grandchildren).

WHY LEAVE LIFE CHANGING DECISIONS IN THE HANDS OF STRANGERS

- An alarming new report reveals people in the South East are leaving major decisions about housing, assets and care to chance
- 85% want loved ones to make decisions in the event of illness or accident – but only 12% have created a lasting power of attorney (LPA) to enable this
- People in the South East are better at planning for death than later life; 44% of people have a will whereas only 12% have an LPA
- SFE member Michael Parr of this firm urges people to safeguard wishes in the event of accidents or illness like dementia

People in the South East are currently living with no control over important later-life decisions around their housing, assets, health, and care, according to a new report by SFE (Solicitors for the Elderly), the national organisation representing legal professionals such as Michael specialising in helping people plan for later life.

The report reveals that whilst 44% of people in the South East have a will in place to manage their affairs after death, only 12% have a lasting power of attorney (LPA) in place to safeguard their wishes in the event they are no longer able to make decisions for themselves, due to accident or illness like dementia.

12% want a family member or friend to make important decisions on their behalf, in the event of illness or an accident. However, few are aware that without an LPA in place, any individuals' affairs, such as their end-of-life wishes and health treatments, can be left in the hands of third party solicitors, social workers, medical doctors, or the British courts.

Even the minority of people that have taken steps to plan ahead for later life may still be at risk, due to poor quality legal advice and invalid documents. 52% of the people with LPAs in place did not use experts or legal guidance, instead taking a gamble using online resources, non-legal advisers, or off-the-shelf kits.

Lakshmi Turner, Chief Executive of SFE, said: "Most people assume that if they suffer an illness or accident, their next of kin will be responsible for vital decisions. The reality is starkly different – loved ones may not be able to make a decision on your behalf unless you have an LPA in place.

An LPA is by far the most powerful and important legal document an individual can have. If you have children, own a home, or have views on your preferred health treatment, we urge you to go to an expert to get the right advice."

SFE is an independent, national organisation of professionals, such as solicitors, barristers, and chartered legal executives, committed to providing the highest quality of legal advice for older and vulnerable people, their families and carers.

To download the report 'Who will decide for you when you can't?' go to: <http://www.sfe.legal/public/welcome>

RESIDENCE NIL RATE BAND (RNRB)

Legislation will be introduced in Summer Finance Bill 2015 to provide for an additional main residence nil-rate band for an estate if the deceased's interest in a residential property, which has been their residence at some point and is included in their estate, is left to one or more direct descendants on death.

The value of the main residence nil-rate band for an estate will be the lower of the net value of the interest in the residential property (after deducting any liabilities such as a mortgage) or the maximum amount of the band. The maximum amount will be phased in so that it is:

- £100,000 for 2017 to 2018
- £125,000 for 2018 to 2019
- £150,000 for 2019 to 2020
- £175,000 for 2020 to 2021

It will then increase in line with CPI for subsequent years.

The qualifying residential interest will be limited to one residential property but personal representatives will be able to nominate which residential property should qualify if there is more than one in the estate. A property which was never a residence of the deceased, such as a buy-to-let property, will not qualify.

A direct descendant will be a child (including a step-child, adopted child or foster child) of the deceased and their lineal descendants.

A claim will have to be made on the death of a person's surviving spouse or civil partner to transfer any unused proportion of the additional nil-rate band unused by the person on their death, in the same way that the existing nil-rate band can be transferred.

If the net value of the estate (after deducting any liabilities but before reliefs and exemptions) is above £2 million, the additional nil-rate band will be tapered away by £1 for every £2 that the net value exceeds that amount. The taper threshold at which the additional nil-rate band is gradually withdrawn will rise in line with CPI from 2021 to 2022 onwards.

The legislation will also extend the current freeze of the existing nil-rate band at £325,000 until the end of 2020 to 2021.

In addition, legislation in Finance Bill 2016 will provide that where part of the main residence nil-rate band might be lost because the deceased had downsized to a less valuable residence or had ceased to own a residence on or after 8 July 2015, that part will still be available provided the deceased left that smaller residence, or assets of equivalent value, to direct descendants. However, the total amount available will not exceed the maximum available residence nil-rate band. The technical details of how the additional nil-rate band will be enhanced to support those who have downsized or ceased to own their home will be the subject of a consultation to be published in September 2015 ahead of the draft Finance Bill 2016.

PLEASE NOTE these regulations are still subject to alteration and clarification by the Government so no immediate action should be taken until the position is clear.

DISCLOSURE OF TAX AVOIDANCE SCHEME (DOTAS)

Draft regulations have been published to strengthen and extend the scope of the Inheritance Tax (IHT) DOTAS 'hallmark'. The proposed new hallmark will require disclosure of any arrangements – whether designed to deliver a tax advantage in respect of a lifetime transfer or the estate on death – which an informed observer, taking account of all relevant circumstances, could reasonably conclude were only made to gain an IHT advantage. However, to be disclosable, there must be an element to the arrangements which has only been included to obtain the tax advantage; or the arrangements must contain one or more contrived or abnormal steps without which, the tax advantage would not have arisen. These conditions will exclude the normal use of exemptions and reliefs from disclosure.

The regulations also specifically exclude from disclosure any changes made to a Will or Codicil; certain types of discounted gift trusts and gift and loan trusts which are considered to be acceptable tax planning.

RETIREMENT AGE INCREASE

The Office of National Statistics data shows that life expectancy has risen by about 3 years every decade since 2010. In 1910 male life expectancy was 51; a century later it is 79 and still rising. Since the government has said that it is realistic to expect a third of adult life to be spent in retirement, which implies a rise in state pension age to 70 by 2050. Some people may consider this bad news but for active healthy people a longer working life should not be a problem, and the good news is that it gives longer to accumulate the savings you need to rely on in retirement.

NEW SMOKING LAW

From 1 October 2015 it is illegal to smoke in a car (or other vehicles) with anyone under the age of 18 being present. The law is changing to protect children and young people from the dangers of secondhand smoke.

Both the driver and the smoker could be fined £50. The law applies to every driver in England and Wales, including those aged 17 and those with a provisional driving licence. The law does not apply if the driver is 17 years old and is on their own in the car.

Every time a child breathes in secondhand smoke, they breathe in thousands of chemicals. This puts them at risk of serious conditions including meningitis, cancer, bronchitis and pneumonia. It can also make asthma worse.

The law applies to any private vehicle that is enclosed wholly or partly by a roof. It still applies if people have the windows or sunroof open, have the air conditioning on, or if they sit in the open doorway of the vehicle. The law won't apply to a convertible car with the roof completely down.

LASTING POWERS OF ATTORNEY – NEW FORMS

On Wednesday 1 July 2015, new lasting power of attorney (LPA) forms were made available from the Office of the Public Guardian (OPG).

The OPG has advised that the new forms for both property and financial affairs LPAs and health and welfare LPAs will be simpler and clearer.

The changes to the forms reflect responses to the OPG's consultation and feedback from users who were directly involved in their development. The OPG hopes that the redesign will make the forms easier to follow and faster to complete. **All existing Powers of Attorney remain unaffected.**

CARE COSTS CAP DELAY

The £72,000 cap, due to come into force in April 2016, has been deferred until 2020.

The cap was due to be introduced as part of the second phase of the Care Act. It was delayed after councils wrote to the Department of Health asking for the launch to be deferred due to the funding pressures faced by local authorities. This is despite the cap forming a key manifesto commitment for the government.

Most older people in care homes will die before their care and support costs reach the £72,000 limit

The delaying the care cap for another four years will cause unacceptable costs to continue to be borne by people with dementia and their families into the next decade.

LEASE EXTENSIONS

We have been speaking with other professionals in respect of a Lease extension and it appears that Lenders are becoming more concerned about the length of time remaining on leases.

Many leases were originally granted for 99 years, but years may have passed since that time. As a lease gets older it is necessary to consider whether it requires extension as many Mortgage Lenders require a certain number of unexpired years remaining to grant a lease. New guidelines have also been issued by RICS. Previously valuations were based on an assumption that at least 70 years are left but now Surveyors must comment on 85 years remaining.

For example, Bank of Ireland require a minimum of 85 years unexpired and Santander have asked for us to confirm the length of term if the Surveyor "assumes" the length is between 55 and 82.

The Landlord does have the ability to charge a premium for a lease extension and the cost of the premium an increase as the lease becomes shorter.

We recommend that leases are checked to ensure that they do not fall below the new limits and to hopefully keep the level of extension premiums down.

STAMP DUTY LAND TAX – second homes

As you may have heard, an increase in Stamp Duty Land Tax rates has been announced in the Autumn Statement for second homes and buy to let properties.

The higher rates will not apply to acquisitions of caravans, mobile home or houseboats nor to corporate or fund purchasers that make significant investments in residential property.

With effect from 1 April 2016, higher rates of SDLT will apply to the purchase of additional residential properties (such as second homes and buy-to-let properties) for chargeable consideration exceeding £40,000.

Therefore, the following SDLT rates will apply on acquisitions of these properties will be:

- £0 to £40,000: 0%
- £40,001 to £125,000: 3%.
- £125,001 to £250,000: 5%.
- £250,001 to £925,000: 8%.
- £925,001 to £1.5 million: 13%.
- Over £1.5 million: 15%.

It will become necessary for purchasers of additional residential properties will to effectively opt in to the higher rates by declaring that the property will not be their primary residence.

If you are considering investing in a second property whether as a Buy to Let investment or otherwise, we recommend you consider the implications of the new charge and either look to purchase prior to the new rules coming in to effect or budget accordingly.

OPERATION CHRISTMAS CHILD

This year again we have been a drop-off point for the Operation Christmas Child shoebox appeal. We received 727 gift filled shoeboxes from members of the public, schools, church groups, clubs and societies (as well as our own) which were then taken to our depot at Guildford for onward transport. As a whole, the Guildford depot processed just over 25,000 boxes. These are making their way to children in countries such as Bosnia, Serbia, Belarus, Ukraine, Azerbaijan and beyond. In many cases, this gift and love filled box is the only present that child will receive. Thank you to everyone who supported us with this achievement.

Disclaimer

This newsletter has been prepared to highlight some key issues. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at September 2015 and may be affected by subsequent changes in the law.

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I would be interested in future newsletters

Name

Address or e-mail address

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If you do **NOT** wish to receive any further updates or communications from us, please notify Diane Anderson by [email](#) or phone on 01730 265111.