

WELCOME TO OUR NEWSLETTER

STAFF CHANGES AT MACKARNESS & LUNT

We can announce to those who may not already be aware that Dennis Morrison has now retired. We all wish him well after a long career in law, mostly with this firm.

Ros Mann in our conveyancing department has also taken the step to retire and make the most of extra time with her grandson and will no doubt be kept busy with another grandchild on the way. We wish her the best for retirement.

To replace Dennis and Ros, we now have two new fee earners.

Sarah Baker,
who joined us in January
who specialises in probate
and is also a Notary



and we now also have
another member of the very
busy probate department,
Crystal Clark, who joined us in
April of this year



Will Writers

We were extremely disappointed to learn that Justice secretary Chris Grayling has rebuffed a recommendation from super-regulator the Legal Services Board (LSB) that will-writing should be regulated.

Chris Grayling suggested more targeted guidance for the legal profession and the strengthening of existing regulation of authorised persons, combined with voluntary regulation schemes and codes of practice for non-authorised providers. He also called for better consumer education and greater use of existing consumer protections.

The LSB recommended in February that will-writing activities, but not estate administration, should be regulated – the first time it has recommended bringing new activities within the scope of the Legal Services Act.

The Law Society, which originally lobbied for the ‘holy trinity’ of wills, estate administration and power of attorney to be regulated, reacted

to the decision with dismay saying , ‘Consumers have been let down by this deeply disappointing decision. We provided plenty of evidence to the LSB, demonstrating that consumers are at real risk from certain unregulated will-writers who can be incompetent, untrained and uninsured.

‘Thanks to the government’s decision today, unregulated providers can carry on writing wholly unsuitable wills, leaving consumers without any recourse when things go wrong as a result.

‘Until the government changes its minds on this, the only sensible choice for consumers is to have a solicitor to write your will, and to ensure a solicitor is chosen to administer the estate of your loved one. A solicitor is qualified and brings the comfort of an unrivalled regulatory and compensation system to put right any errors.’

Government gives more details of residential care costs cap

The government has published further clarification of its policy on charging the elderly for residential care.

It has previously been announced that lifetime residential care costs were to be capped at £72,000, starting in 2016. It now emerges that this amount will be calculated as the total cost of an individual's eligible needs for care, including the local authority's contribution. This is much better news for people whose modest financial resources force them to top-up the local authority's contribution with their own, since it means that the cap will come into play much sooner than if it were calculated on their own outlay alone. Also, those who need to go into residential care before the state pension age will be allocated a lower cap.

The assets threshold below which people will be entitled to state financial assistance with residential care will be set at £118,000, including their home. Currently the threshold is £23,250. If a person has to go into a care home while their partner or dependent still lives in their house, the house will not be included in the assets assessment.

One group that will get an extra benefit are the 125,000 people who need residential care but are too wealthy to get state assistance. In future, they will be able to buy residential care at the same price as the local authority typically £500 a week, instead of the inflated prices they pay as private individuals. This could cut their residential care bills by 20 per cent.

All individuals will also have the option of joining a not-for-profit deferred payment scheme, where the local council pays their residential care fees in return for a charge on their estate without forcing the sale of their house during their lifetime. This will be available in 2015. It will probably work in the same way as draw-down mortgages, where care home fees are added on weekly rather than in a lump sum so as to accrue interest as slowly as possible.

However, care home residents will have to pay a £12,000 'hotel charge' to their daily living costs, if they are deemed able to afford it.

The government estimates that one in eight people will benefit from the charging cap. To use it, elderly people will have to pay a form of advance insurance premium calculated according to their assets. Moreover, the cap is only triggered once an individual has been assessed eligible for care. As Baroness Grey-Thompson pointed out in parliament, there could be hundreds of thousands of people who think that they will now not have to sell their homes to pay for care in their old age, yet will not be entitled to the cap, if the eligibility threshold is set too high.

DIVORCES - LAW SOCIETY WARNS AGAINST "CUT PRICE" OPTIONS

The Law Society have raised concerns that celebrity divorces (particularly "quickie" divorces) that are seen in the press may give the ordinary couples an unrealistic view as to what to expect when separating and divorcing.

Cuts in legal aid means that more and more divorcing couples are looking to represent themselves, or using divorce web-sites/DIY divorce web-sites to assist them through the process, without really understanding the procedure. However, the Law Society's warnings are that cut price options are not always the best. Even in the most straightforward cases, matters can develop into complicated and stressful legal actions, particularly if one or both parties are being difficult or withholding information. Getting legal advice from a family law

solicitor will allow you to obtain advice about your rights and the options available to you as well as explain the complexities of the divorce and any financial settle process. The Law Society are very much urging individuals to seek profession assistance as "seeking legal advice from a solicitor will often save you time and money in the long run" particularly where tactical advice in resolving a divorce can be crucial.

Therefore, with even the Law Society vocal in the light of quickie divorces, such as Nigella Lawson and Charles Saatchi, if Mackarness & Lunt can assist in any way regarding the divorce or separation process, an individual's rights in how to navigate through resolving all aspects of the end of a relationship, please contact Samantha Small or Charlotte Oldham.

LANDLORD AND TENANT – IMPLICATION OF SUPERSTRIKE LIMITED V MARINO RODRIGUES

Landlords or letting agents may be aware of the recent Court of Appeal judgment, however, it will often take time for information to filter through from the courts. The above case significantly changes the requirements of a landlord when it comes to protecting a tenant's deposit.

As many landlords will be aware, it is imperative that any deposit for a tenancy created after 6th April 2007 requires the deposit to be placed in a Government backed deposit scheme. This should happen at the commencement of the tenancy with the deposit to be protected within a fixed period of time and with a further fixed period of time, the prescribed information relating to that deposit scheme, how the tenant can obtain information, resolve the dispute at the end of the tenancy etc, all being provided from the landlord (or agent) to the tenant at the beginning of the tenancy.

However, the Court of Appeal have ruled that when a tenancy gets to the end of a fixed term (the first twelve months for example) and then rolls on to what is known as a Statutory Periodic Basis (a month by month tenancy) that this in essence creates a new tenancy. This is an entirely new concept as it results in tenancies that were perhaps created prior to April 2007 now falling under the new deposit scheme rules.

In this particular case, having not met the Government requirements of the Tenancy Deposit Protection Legislation, the landlord was not entitled to serve a Section 21 Notice requiring possession to be returned of the property.

Therefore, the Deposit Protection Service has issued guidance on how landlords should protect themselves if they are landlord of a tenancy which may now fall under the new rules.

The Deposit Protection Service state there are three options, one to do nothing (however a potentially risky strategy) the second option is to issue or re-issue the prescribed information relating to the deposit protection information to the tenant at this stage to allow you to rely on any Section 21 Notice seeking possession at a later stage. The third option is to issue the prescribed information in due course before you serve a Notice requiring possession of the property.

However, if a landlord falls foul of the requirements to protect a deposit at the beginning of a tenancy or to provide the prescribed information, there are significant penalties (up to three times the value of the deposit) that the tenant could apply to the court to impose on the landlord.

Therefore, it is imperative that all landlords ensure and correctly comply with the Government legislation, particularly for landlords who thought they may not have fallen within the realms of the new scheme but now may do so following the case of Superstrike Limited v Marino Rodriguez.

If you would like any advice or a copy of Deposit Protection Service information regarding this case and the changes in the law, please do not hesitate to contact Samantha Small.

UK Residence – new rules from April 2013

From 6 April 2013 the rules that determine if someone is resident in the UK for tax purposes have been put on a statutory basis. These rules are known as the Statutory Residence Test (SRT). For the majority of people whether or not they are resident for tax purposes is quite straightforward under the test and their position will not change. For those with complex circumstances the SRT will provide more certainty about their residence status.

To help you understand your tax residence status HM Revenue & Customs (HMRC) will be launching an on-line tax residence indicator. This residence indicator will give you an indication of your tax residence status after answering a few straightforward questions such as how many days you spent in the UK, where you have a home and if you have family ties. The first version will be a pilot version to be launched by early June 2013.

Find out more about the SRT and changes to Overseas Workday Relief by following the links below:
[Guidance Note: Statutory Residence Test \(SRT\) \(PDF 425K\)](#) [Guidance Note: Overseas Workday Relief \(OWR\) \(PDF 88K\)](#)

PETERSFIELD IN BLOOM

We are delighted to announce that we have won again in our category for the Petersfield in Bloom competition. We take much pride in our flowing baskets which are lovingly tended by several members of staff, but particularly Delia Cann, to whom goes our thanks for another lovely display. This is now the 8th year running we have collected this award.

CHARITY NEWS - Operation Christmas Child Shoe Box campaign.

It may seem early to be thinking about Christmas, but we are once again gathering shoe boxes filled with goodies for the children later in the year. The drop-off dates this year are 1st to 18th November. Delia has also started fund raising for another trip in 2014 to give out the much appreciated Christmas boxes to very deserving children. If you would like to know any more information you can contact Delia by e-mail at deliacann@macklunt.co.uk or visit www.operationchristmaschild.org.uk

[Macmillian Coffee morning](#) – again we will be holding this event on 27th September. We raised over £210 last year and aim to beat this total.

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 August 2013 and may be affected by subsequent changes in the law. Additional information and updates are available from time to time on our [website](#).

I would be interested in future newsletters

Name **Address**

Or if you would like this to be sent electronically **e-mail address**

Return to: 16 High Street, Petersfield, Hampshire GU32 3JJ Tel No: 01730 265111
(SRA Number: 58323)

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