

Increase in Will claims following ruling

Mark Robinson, head of litigation at Hodge Halsall, and a specialist in dealing with claims on Estates, has warned that a recent ruling could lead to an increase in claims by family members who have been snubbed in a relatives Will.

The Court of Appeal recently decided that a daughter, Heather Iltot, could request a larger share of her mother Melita Jackson's Will, despite being

overlooked in a letter of wishes after they fell out.

The mother left her Estate to be shared between a number of charities including the RSPB and the RSPCA. However, the Court of Appeal ruled that it was unreasonable for the mother to put the charities before her own daughter.

"It is likely that we will now see a rise in claims from family members who

have not been named in the original Will" said Mark Robinson, "Solicitors and those making a Will need to be aware of this ruling and its impact on how gifts to charities may be treated".

Anyone contemplating a claim on an Estate should contact Mark Robinson (markrobinson@hhlegal.co.uk) at Hodge Halsall on 01704 531991.

Beware - the problems of joint Bank accounts

A not uncommon situation, and one in which we have recently been involved whilst dealing with an Estate, can arise where one person puts money into joint names. The general principle, under English law, in such circumstances, is that there is a rebuttable presumption that the person transferring the money into joint names did not intend to make a gift of it, and unless that presumption is rebutted, the other joint account holder will hold the money on resulting trust for the person who paid in the funds. However, in certain circumstances, the nature of the relationship between the 2 account holders can give rise to an opposite presumption – that the person paying in the money did intend to benefit the other account holder and in which case there will be no resulting trust.

A recent case decided in Liverpool – Re. Northall [deceased] highlights the type of difficulties that can arise in such circumstances when the person paying the money into a joint account dies. Mrs Northall had bought a house with one of her sons. When it was later sold the proceeds were placed in a joint bank account, opened with another of her sons. Various payments were made out of the joint account by the son. Mrs Northall died shortly afterwards and the son transferred the remaining

balance of the joint account into the names of himself and his wife. He alleged that his mother had authorised the payments out of the account before she died and had told him that he could keep the remainder of the monies in the joint account after her death.



The son was unable to produce any evidence that his mother had intended the money should be advanced to him by way of gift. The joint account had been opened for reasons of convenience and the judge held that although the form provided by the Bank at the time the account was opened explained that the account would operate with the right of survivorship, the son had produced no evidence that this form had been shown to Mrs Northall nor explained to her. The balance of the account at the date of Mrs Northall's death therefore formed part of her

estate and her son was ordered to repay to the estate all sums drawn out of the joint account in his favour, other than those which he was able to prove had been authorised by his mother.

Many children may genuinely assist elderly parents in managing their affairs by operating joint bank accounts with them as a matter of convenience. The decision in Re. Northall deceased emphasises the requirement for clear records to be kept of the intention of the deceased parent at the time any payments from the account are authorised. If the manner in which the account has been operated is questioned at some future date children (and any other joint account holder) may find themselves having to repay the estate sums of money paid out by them that cannot be adequately explained.

To avoid problems of this nature, we recommend preparation of a Lasting Power of Attorney allowing chosen individuals to act on your behalf and only in accordance with your specific directions. The Lasting Power of Attorney process is overseen by the Court of Protection and is less likely to be abused. If you would like to create a Lasting Power of Attorney, please contact us on 01704 531991.

We use the word 'Partner' to refer to a member of the LLP. Hodge Halsall LLP registered Office: 18 Hoghton Street, Southport, Merseyside PR9 0PA Tel: 01704 531991. Also at: 565 Liverpool Road, Ainsdale, Southport PR8 3LU Tel: 01704 577171. Partners: Mark P Robinson, Judith Bond & Gordon Hutton. Hodge Halsall LLP is a Limited Liability Partnership authorised and regulated by the Solicitors Regulation Authority. registered No. OC328351

www.hodgehalsall.co.uk

hodgehalsall



Legal News

The newsletter for Clients of **hodgehalsall**

Autumn 2011 Issue no.8

Buying a new build property?



With builders and property developers starting to build once again you may be considering purchasing a "new build" property. You may be buying off plan or the property may be built already. Whatever the situation you will need your Solicitor to ensure you are suitably protected.

There are many aspects to a new build property but some of the more important ones to consider are: -

- **Plans.** Check the builder's plans for what you are buying and make

sure he cannot materially deviate from the plans. This would include both the actual layout of the property and the materials used.

- **Incentives.** Most builders will offer various forms of incentives which can include paying for your Stamp Duty Land Tax, reductions in the price and part exchange. Bear in mind however that if you are obtaining a mortgage for your purchase then your mortgage lender will have to approve the incentive given.

- **Infrastructure.** Your Solicitor must ensure that the development has adequate provisions for the installation and future upkeep of all the roads, sewers, drains and other aspects of the development. Any necessary rights of way will need to be looked at too. [for example a right to use the roads and pavements, pending their adoption by the Council].

- **Covenants.** Covenants are obligations to either do or not do certain things. New build properties will invariably be subject to covenants which may include for example an obligation to obtain the builder's consent in the future for any proposed house alterations such as an extension or conservatory.

At Hodge Halsall LLP we are able to guide you through the purchasing process whether it be a new build or any other property, residential or commercial. Please speak to one of our Property Solicitors, Paul Leadsom (paulleadsom@hhlegal.co.uk) on tel. 01704 531991 for more details.

Inside this issue

<i>Buying a new build property?</i>	1
<i>The pitfalls of unregulated will-writing</i>	2
<i>Buy-to-Let comeback?</i>	2
<i>Hodge Halsall secures Law Society's new quality mark</i>	3
<i>Bankruptcy & the family home</i>	3
<i>Increase in will claims</i>	4
<i>Beware the problems of joint bank accounts</i>	4

Welcome to Hodge Halsall's Newsletter For Private Clients

This Newsletter is designed to summarize various areas of law that may impact upon you and your family. It is a periodic publication of Hodge Halsall LLP and is intended for legal guidance only. It is not to be construed as a substitute for legal advice. For advice specific to your circumstances please contact your Hodge Halsall representative.

We are interested in your opinion. If you have any suggestions about how we can improve Legal News or if you would like us to cover a specific topic please contact: Derek Alman at derekalman@hhlegal.co.uk or call 01704 531991.

www.hodgehalsall.co.uk



The pitfalls of unregulated will-writing

The Legal Ombudsman's first annual report since the organisation was launched in October 2010 has been issued.

There are many points of interest in the report by Adam Sampson. He particularly draws attention to the pitfalls of using will-writing companies as opposed to regulated solicitors when it comes to getting redress for errors. He says, "One service which crops up a lot is will-writing. It's a service carried out often by will-writing firms who aren't regulated. Because of this, customers are left with little means of redress when things go wrong".

A major concern is that many will-writing companies give the false impression to the public that they are experts. However, many companies employ people who are not qualified

and have no expertise in Will drafting. Des Hudson, chief executive of the Law Society for England and Wales, welcomed the report and said, "The gap in regulation which allows unregulated cowboys to operate in areas like will-writing does not just cause unfair competition to solicitors, who provide a regulated, professional service. It is also damaging to consumers because the unregulated providers are not insured, do not provide a compensation fund and are not covered by the Legal Ombudsman's scheme for consumer redress."

The Legal Services Board have now announced that there will be a statutory investigation into will-writing following a mystery shopper exercise which highlighted key failures. The Chair of the Legal

Services Consumer Panel, Dr Dianne Hayter, observed, "It is vital that advisers do a competent job, especially since any defects are unlikely to be discovered until it is too late to fix them".

All Wills prepared by Hodge Halsall are drafted by qualified lawyers and the firm is regulated by the Solicitors Regulatory Authority which guarantees that all clients are automatically entitled to the benefit of insurance cover in respect of any work carried out by us on their behalf.

To make a Will with Hodge Halsall please contact your local office - Geoff Dootson (geoffdootson@hhlegal.co.uk) at Southport on 01704 531991 or Gordon Hatton (gordonhatton@hhlegal.co.uk) at Ainsdale on 01704 577171.

Buy-to-Let comeback?

The economic downturn seemed to herald the death knell for buy-to-let as many investors who had bought property seeking a capital gain struggled as mortgage rates rose. However, as property prices have fallen investors concentrating on rental income rather than capital growth are moving back into the market. Research by Savills, Property Consultants indicates that currently the price of a typical two bedroom flat in Merseyside is £125,000.00 which could produce a gross monthly rental income of £640.00. Mortgage interest repayments at a 4.49% rate based upon a 75% loan to value mortgage would be £350.00 per month. Rental income is also expected to continue to rise with Savills calculating that rents will increase by 7% in 2011, 6.5% in 2012 and 5.5% in 2013.

Buy-to-let mortgages now require a large deposit of typically 25% but in view of rental returns buy-to-let may represent a good long term investment.



Points to consider before contemplating buy-to-let include :-

- research the market – look for areas where the prospects of finding a tenant are high – young professionals may, for example, be prepared to rent for long periods and city centres may produce promising returns.
- check your figures – work out what you can afford to spend, the deposit that you will need to put down and the rent you are likely to receive. Ensure you know how much your monthly mortgage repayment will be. Factor in the

possibility of the property being empty for short periods.

- shop around to obtain the best possible buy-to-let mortgage.
- be realistic in your expectations. Short term capital growth is highly unlikely and investment should now be based on income return over the longer term.
- consider the downside – house prices have fallen dramatically and may continue to do so. Property can require major repairs and often at unexpected times. Have you a fund set aside to deal with contingencies?

Hodge Halsall secures Law Society's new quality mark

Hodge Halsall has secured membership to the Law Society's Conveyancing Quality Scheme (CQS) - the mark of excellence for the home buying process.

Hodge Halsall underwent rigorous assessment by the Law Society in order to secure CQS status, which marks the firm out as meeting high standards in the residential conveyancing process.

Law Society President Linda Lee said that the Law Society introduced CQS to help to recognise high standards in the home buying process.

"CQS improves efficiency with common, consistent standards and service levels and enables consumers to recognise practices that provide a quality residential conveyancing service."

"Buying a home is one of the largest purchases anyone will make in their lifetime, so it is essential that it is done to the highest standard by a solicitor. There are many different conveyancing service providers out there, making it difficult for home buyers to identify those which can ensure a safe and efficient level of service."

Gordon Hatton, Partner in Hodge Halsall, says: "Hodge Halsall is delighted to have secured CQS status. It is recognition of the high standards we provide to our residential property clients and is a signal to future home buyers of the excellent service level we provide at what is often a stressful time for many people."

"The overall beneficiaries will be clients who use Hodge Halsall when buying a home. They will receive a reliable, efficient service as recognised by the

CQS standard."

The scheme requires practices to undergo a strict assessment, compulsory training, self reporting, random audits and annual reviews in order to maintain CQS status. It is open only to members of the Law Society and to those who meet the demanding standards the scheme will set and has the support of the Council of Mortgage Lenders, the Building Societies Association, Legal Ombudsman and the Association of British Insurers.

If you require a no-obligation quotation for buying or selling your home, or require information on any aspect of conveyancing, please contact Gordon Hatton (gordonhatton@hhlegal.co.uk) or Paul Leadsom (paulleadsom@hhlegal.co.uk) on 01704 531991.

Bankruptcy and the family home

With bankruptcy becoming ever more prevalent in today's economic climate it can be a real issue for people facing divorce. When a marriage breaks down, the assets of each party form the 'matrimonial pot' that is available for division between them, as part of the financial settlement. But what if one party is bankrupt?

When someone becomes bankrupt their property automatically vests in (i.e. passes into the control of) the trustee in bankruptcy. This is likely to have serious implications for the bankrupt's spouse, as the pot of matrimonial assets is potentially made much smaller by the bankruptcy.

When it comes to the family home, the law has to balance two conflicting interests: those of the trustee and creditors, and those of the bankrupt as well as their family. For example, if the matrimonial home were jointly owned by the bankrupt and their spouse, the house cannot be transferred into the spouse's sole name without the Trustee in Bankruptcy's consent. This is likely only to be given if the spouse can buy out the bankrupt's share at a reasonable market value – something that may not always be possible.

Where the home is owned and occupied exclusively by the bankrupt, there may be an immediate sale for the benefit of the creditors. However, if there are others living in the home,

for example a spouse and/or dependent children, then the Trustee has to make an application to the court for an order to sell the property. Generally speaking if someone has acquired occupation rights, they are entitled not to be evicted without a court order. Where the Trustee applies to the court for an order for sale or possession of the property, the court must have regard to a number of issues, including:-

Where the spouse/civil partner is living in the home

- the interests of creditors
- the needs and financial means of the spouse
- the needs of any children

Where a minor child is living in the home

- the interests of creditors
- the financial resources of the bankrupt
- the needs of the children
- all circumstances surrounding the case

The effects of bankruptcy can be devastating. So what can be done if you think you will be affected?

Take action quickly – apply to the Courts

Preferably you should sort out as much as possible before the bankruptcy starts. Bankruptcy is often threatened before any action is taken. A timely application to the



Family Court may allow appropriate orders for financial settlement to be made before a bankruptcy order takes effect. There remains a chance that the Trustee could try to have parts of any financial settlement set aside. In this case, you should seek legal advice as soon as possible.

It is also important to note that the situation for cohabitants is different to that of married couples and they may find themselves in a difficult position if they have not acquired occupation rights in some way.

In addition to the family home, bankruptcy will have implications for pension rights and other assets. This is a complex area and specialist advice should be sought if you believe you may be affected, directly or indirectly, by bankruptcy.

For advice on all aspects of divorce please contact Sinead Connolly (sineadconnolly@hhlegal.co.uk) and for advice on bankruptcy matters please contact Judith Bond (judithbond@hhlegal.co.uk), both on 01704 531991.