

Legal News

The newsletter for Clients of **hodgehalsall**

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Two Weddings and a Funeral

Second Marriages & Estate Planning Implications



Around 45 % of marriages now end in divorce and 38 % of those affected marry for a second time. From an estate planning perspective second marriages can be fraught with tense and complex challenges. Each spouse may have children from prior marriages and children may result from the second marriage. Spouses may come to the second marriage from vastly different financial positions. The needs of children and assets from previous marriages or relationships may need to be

balanced with those from the new marriage. Estate planning needs to reflect such competing interests and relationships rather than just concentrating on "numbers".

Issues to be considered upon a second marriage might include :-

- balancing provision for a second wife and children whilst ensuring that children from a previous marriage are adequately catered for;

- allowing a second wife to remain in occupation of a property brought into the marriage from a previous relationship rather than directly transferring legal ownership in that property;
- if assets are owned jointly in a second marriage but arise from a first relationship steps may wish to be taken to ensure those assets pass to children of the first marriage and not to stepchildren;
- checking how pension provision will be paid out on death.

Setting up a family trust may be one way to ring fence assets and potentially avoid such problems. Each second marriage is unique. Each couple have their own set of goals to accomplish. Proper estate planning can tailor a solution to help a couple meet those goals.

For advice on Estate Planning issues please contact
Geoff Dootson
(geoffdootson@hhlegal.co.uk)
on 01704 531991 or
Gordon Hatton
(gordonhatton@hhlegal.co.uk) on
01704 577171, in Hodge Halsall's
Private Client Team.

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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.

Prenuptial Agreements

Traditionally Courts in England and Wales have given little weight to prenuptial agreements, on the basis that enforcement would be against public policy. Recently, however, English Courts have moved towards accepting that a prenuptial agreement can be a material consideration when deciding what adjustments to make to the financial circumstances of a couple on divorce.

The recent case of *Radmacher v Granatino* indicates that where appropriate steps have been taken before marriage, Courts can give due weight to such agreements provided that, both parties, at the time the agreement was entered into:-

- have disclosed their respective financial positions to the other;

- had the opportunity to take independent legal advice before signing; and
- entered into the agreement sufficiently far in advance of the wedding (a minimum of twenty eight days);

Uncertainty still exists about how long a prenuptial agreement should be allowed to be enforceable before it is overtaken by subsequent events. An agreement which might bind a couple during the first years of marriage may become increasingly irrelevant with the passage of time and, in particular, with the birth of children.

The Conservative Party have announced that if they form the next

government they will legislate on making prenuptial agreements binding. For the time being, a prenuptial agreement allows a couple to set out in writing what they consider would be an equitable distribution of their assets and financial resources at a time when their relationship is sound and harmonious and potentially enables a couple to have a greater degree of control over the financial implications of any later divorce.

For further details relating to prenuptial agreements please contact Clare Ellison (clareellison@hhlegal.co.uk) or Julia Jones (juliajones@hhlegal.co.uk) in our Family Department on 01704 531991.



Intestacy rules may be changed to allow cohabitants to qualify

A consultation paper published by The Law Commission has suggested a number of reforms to the existing law of intestacy and provision for families and dependants on death. The consultation document considers that the current law "...causes hardship for cohabitants and is out of line with public opinion". The number of UK marriages is rapidly falling whilst cohabitation is increasingly popular. In the ten years to 2006 the number of cohabiting couples increased by some 65%. Some 4/5ths of cohabiting couples have not made a Will and the impact of the current intestacy laws upon such relationships is therefore significant. Currently if a cohabiting partner dies without making a valid Will the survivor of the relationship is entitled to nothing from the deceased's estate. By contrast a surviving spouse has an entitlement to a minimum of £250,000.00 with

further rules applying if the estate exceeds that amount.

A new definition of cohabitant is proposed for the purposes of the intestacy laws to provide for a person who immediately before the death of the deceased was living with him/her as a couple in a joint household but was neither married nor a civil partner of the deceased. Where cohabitants have had children it is suggested that there should be no minimum cohabitation period and that the surviving partner should have the same entitlement under the intestacy rules as a spouse. Where there have been no children of the relationship it is considered that the surviving cohabitant should have the same entitlement as a spouse if cohabitation had continued for at least five years before death. Where cohabitation had existed for between two and five years before death the surviving cohabitant would

have an entitlement to one half of the amount which a spouse would have received from the estate.

Consultation closes on 28th February 2010. The proposals have been attacked by many who see them as another blow to the sanctity of marriage. The consultation paper is available on the Law Commission website (www.lawcom.gov.uk/current_consultations).

The problem can be entirely avoided by making a Will in all circumstances. For further advice call Geoff Dootson (geoffdootson@hhlegal.co.uk) at our Southport office on 01704 531991 or Gordon Hatton (gordonhatton@hhlegal.co.uk) at our Ainsdale office on 01704 577171.

Snow accident not the fault of travel company



The tour operator TUI was found, in a recent Court of Appeal hearing, not to be negligent in an action brought by a holidaymaker injured in a toboggan accident.

Mrs Parker and her family had gone on a skiing holiday to Mayrhofen in Austria with Thomson Holidays and had decided to go on an evening tobogganing trip at a nearby resort. The group had been briefed on the coach, and at the top of the toboggan run, that they must dismount the sled at the end of the run and not continue down the road. As a reminder there was a red flashing light at the end of the run.

Upon completing their run the remainder of the group dismounted and continued downhill on foot as instructed. Mrs Parker and her friend Mrs Owen decided to remount their sled and toboggan down the road. They did this, Mrs Parker stated, as they were finding it difficult to walk on the icy road, they were being told to hurry up from below and because Mrs Owen was in some pain from a recent knee operation. Mrs Parker was unable to explain why, as her husband had done, they had not

walked down the side of the road where there was snow and it was easier to walk. Whilst tobogganing down the road they lost control and crashed into some frozen bales of straw. Mrs Parker, who was at the front of the sled, suffered serious leg injuries.

Mrs Parker brought a claim for negligence against the tour operator.

The Judge in the first hearing had found in favour of TUI. Lord Justice Longmore upheld the original decision on Appeal, and whilst sympathising with Mrs Parker stated "I cannot bring myself to hold that it is the duty of a tour operator dealing with rational adults on a winter holiday to repeat simple warnings already given with clarity or to point out obvious dangers of ice on the road and the relative safety of snow at its side." Mrs Parker was therefore unsuccessful in her claim.

Whilst the facts of the case may, on the face of it, seem straight forward, the Court had to make a number of findings including:-

- TUI were only acting as intermediaries and owed no direct

contractual duty to Mrs Parker

- on the facts, however, TUI assumed responsibility to their customers, including Mrs Parker and owed her a duty of care.
- there was no duty on TUI to place a representative at the end of the run to repeat the warning not to remount the toboggan when warnings had already been given and TUI were dealing with rational adults.
- the fact that such risk assessment as existed did not address the relevant risks was irrelevant because if it had, no additional precautions would have been taken

Hodge Halsall is able to assist with claims relating to accidents at home and abroad and to deal with the legal complications arising in such cases.

Please contact Mark Robinson at our Southport office at markrobinson@hhlegal.co.uk or telephone 01704 531991. Further details relating to accidents and claims for compensation can be found on our website at www.hodgehalsall.co.uk.

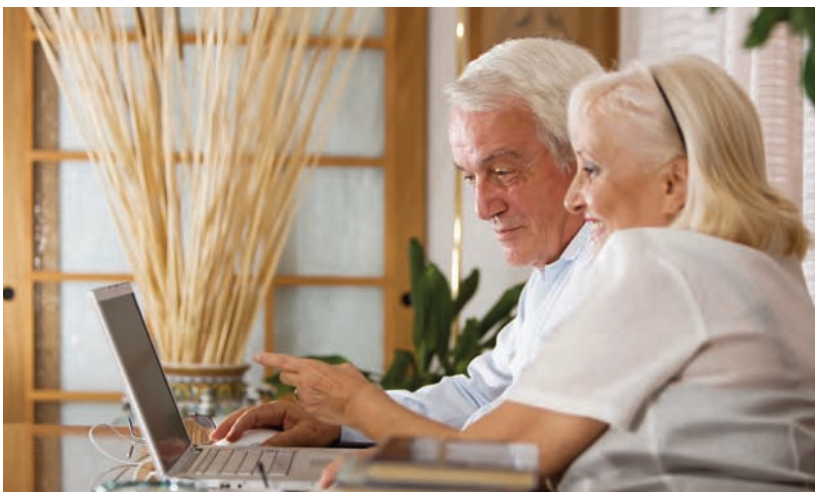
The end of HIPs?

With Conservative shadow housing minister Grant Shapps vowing to abolish the compulsory seller's pack within weeks of coming to power, and replace it with a more robust 'ready pack' it would seem the much maligned Home Information Packs (HIPS) are now living on borrowed time.

The proposed ready pack will include legal documents, up-to-date searches, the management accounts of apartment buildings, lease information, listed building and planning consents and guarantees - some of the documents glaringly omitted from the existing scheme.

Despite the relentless positive spin and propaganda put forward by the HIP providers, HIPs have been largely regarded as a failure and Solicitors across the country would welcome their abolition or at the very least, a complete overhaul.

Residential care home fees - Part 1



If you want assistance with your care home fees, and do not qualify for NHS funded care, the local authority will carry out a financial assessment. The rules which are applied are set out in a document called the "Charging for Residential Accommodation Guide" known as CRAG.

All your income must go towards the cost of care. If that is insufficient, then your capital is considered.

What is capital for the purposes of the assessment?

- Savings
- Investments (but there are exceptions)
- Personal possessions are excluded
- Your home (unless exempt)

The lower capital limit for residential care in England is £14,000 and the

higher capital limit is £23,000. If you have capital of less than £14,000 you do not need to contribute from capital.

If you have capital of over £23,000, you have to make up the whole of the shortfall from capital.

If you have capital between the lower and the higher limits, you will have to contribute £1 per week from capital for every £250 of capital over the lower limit, in addition to your contribution from your actual income. It is unlikely that any capital in excess of £14,000 will be generating income anywhere near the above figures and therefore your capital will be eroded until you reach the lower limit of £14,000, at which point you will no longer have to contribute from capital.

The following capital assets are excluded from the capital assessment:

- Life policies; it is possible to take advantage of this by the use of investment bonds which, even if they only have a small life policy element, i.e. a low guaranteed death benefit they will be exempt from the assessment.
- Personal possessions are excluded completely.
- Your house is exempt if it is occupied by:
 - A spouse
 - A civil partner
 - An unmarried partner
 - A relative who is over the age of 60
 - An incapacitated relative (including, for example, a person in receipt of incapacity benefit or disability living allowance or attendance allowance)
 - A child under the age of 16

This is a complex subject and further advice should be sought. Please contact Geoff Dootson (geoffdootson@hhlegal.co.uk) at our Southport office on 01704 531991 or Gordon Hatton (gordonhatton@hhlegal.co.uk) at our Ainsdale office on 01704 577171 for a full and confidential discussion.

Property-the road to recovery?

As we enter a new decade there are conflicting views on how the property market will fare. When recently asked, three leading national estate agencies gave their views on the property market over the coming year, five year and ten year periods.

2010

Savills: prime values will drop 1 per cent, and average prices 6.6 per cent.

Knight Frank: prime property will rise 3 per cent.

Cluttons: best scenario will be rises of 2 per cent; worst is a drop of 5 per cent.

2015

Savills: prime London up 35 per cent; prime country 30 per cent; average prices 27 per cent.

Knight Frank: prime property up 38

per cent by 2014; mainstream property up 19 per cent.

Cluttons: steady rises of 3 to 4 per cent per year from 2011 to 2014.

2020

Strutt & Parker: prices up 30 to 40 per cent after 2015 to peak in 2020.

Knight Frank: up 63 per cent on 2009.

Bidwells: up 68 per cent on 2009 by 2018.

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 Hatton. Hodge Halsall LLP is a Limited Liability Partnership registered by the Solicitors Regulation Authority. registered No. OC328351

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