



Legal News

The newsletter for Clients of **hodgehalsall**

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Broken HIPs

Since 14th December 2007, subject to limited exceptions, every home put on the market, no matter what size, must have a Home Information Pack (HIP).

First introduced for four bedroomed properties in August 2007 in a bid to simplify the home buying process 57% of people questioned about their usefulness a year after implementation thought it was time to scrap HIPs. The YouGov poll, commissioned by Leeds Legal, an alliance of the city's major law firms, found that only 5% believed the packs had delivered benefits, while 68% considered they had failed to make a positive difference.

The controversial scheme was introduced despite strong opposition and concerns from estate agents associations, the Council of Mortgage Lenders and the Law Society. Conservative housing spokesman Grant Shapps has gone on record as saying HIPs have undermined the housing market: -

"One year on, the public don't trust the paper these packs are written on... the only people who want to keep these broken HIPs are the vested interests who are peddling them, and the Government ministers who are falsely using the green fig leaf of the environment to justify this latest public policy disaster."

So, what exactly are some of the problems with HIPs?

Firstly, one of the primary aims of HIPs was to reduce the time spent by a buyer's solicitor submitting the usual pre-contract



searches (a local and a drainage search). However, the type of local search provided in the majority of HIPs, known as a 'personal search' poses major problems for buyers. Several mortgage lenders do not accept personal searches due to the risk they contain in that they are not carried out by the Local Authority themselves. For the same reason, prudent Solicitors advise buyers to carry out a local search regardless of the lender's point of view. The result in such circumstances is that the search provided in the HIP, is redundant.

Secondly, regardless of the issues above, searches should only be relied upon if they are less than six months old at the date of completion. There is no obligation on sellers to update HIPs and therefore unless the seller voluntarily pays for new searches, those provided in the HIP will again be redundant, even if the HIP is just six months old.

Thirdly, as the legislation does not require

it, many HIPs do not contain all of the documentation required to sell a property, particularly for leasehold properties. Necessary old title documents, ground rent receipts and service charge information are rarely found in a HIP (and in the writers experience are yet to be found!).

Finally, practical issues have arisen regarding the actual supply of the HIP. Due to the length of some HIPs parties are reluctant to produce hard copies and some HIP providers even charge for every copy they produce. Predictably, the result is that such a minor detail as who will pay for a hard copy has delayed transactions and created previously non-existent delays in the conveyancing process.

With the fundamental idea of HIPs being to speed up the conveyancing process, all of the above issues are a costly hindrance in achieving this aim. The Government's recent announcement to press on with HIPs without fully addressing all of the problems surrounding them has been met with widespread anger across the housing industry. Perhaps most disappointingly to all concerned is that the problems HIPs now present are those that were vociferously warned of by representative bodies such as the Law Society before their implementation.

For further advice on HIPs or any conveyancing matter please contact Paul Leadsom at paulleadsom@hhlegal.co.uk or on 01704 531991.

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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.

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Making a Will - Choosing Executors and Trustees



'Executors' are people named in a Will who have the task of administering the estate and making the application to the Probate Registry for the Grant that allows the estate to be distributed. 'Trustees' are those responsible for looking after any parts of your estate, that are put into trust for the benefit of others. Trustees and Executors are often the same people.

The three main categories of Executors and Trustees are individuals, professional people (e.g. a solicitor or accountant) or a trust corporation. Each has advantages and disadvantages dependent upon particular circumstances. The following points should be considered:-

- availability
- suitability
- willingness to act
- any possibility of conflict or dispute
- the possibility of predeceasing
- the size, nature and location of the estate and the extent and complexity of the burden placed on Executors and Trustees,
- the costs involved

Executors and Trustees should be chosen carefully. They should be trustworthy, reasonably expected to outlive the person making the Will and ideally have some knowledge or experience of dealing with financial matters.

Being an Executor and Trustee carries great responsibility and it is advisable to let any individuals chosen know that they have been nominated. Similarly, if professionals have not been chosen the person making the Will should be satisfied that the individuals chosen understand the full extent of their duties and responsibilities and that they will be able to engage professional help (to be paid for out of the Estate rather than personally) but that they cannot charge for their own time. Using professional help is

particularly advisable if an Estate is likely to incur tax.

Many people underestimate the amount of work involved in the administration of an estate and the importance of knowing and understanding the tax rules. Also, it can be hard to find the time to carry out the work, and to cope with the sudden extra responsibility in addition to the grief of losing a relative or friend.

In days gone by it was considered a compliment to ask a friend or relative to be your Executor and Trustee. However, because of the onerous nature of the responsibilities, many people opt for professional Executors and Trustees such as solicitors, accountants or trust corporations.

Being an Executor and Trustee can be a difficult and challenging exercise. It is generally best given to professionals with the expertise and skills to ensure that your estate is managed as efficiently and as effectively as possible.

For further details on all aspects of making a Will please contact Gordon Hatton on 01704 577171 or gordonhatton@hhlegal.co.uk.

Divorce and the "Credit Crunch"

The impact of the current economic climate is becoming increasingly noticeable in family law. The nature of the way that divorce settlements are dealt with is changing. More couples are looking to effect a "clean break" divorce meaning that the parties have no ongoing financial commitment to each other.

A lump sum payment is involved in a "clean break" divorce to cover the capital and income needs of the other party. Therefore if that party's income needs are substantial, the capital entitlement could run into large figures to fund a long term maintenance payment.

From the viewpoint of the less affluent party to the divorce a "clean break" is a less attractive approach during the credit crunch. Once the economic climate improves and assets regain their value

any claim to have the financial agreement reassessed will be barred as a "clean break" has taken place. Any valuation of financial assets now may be at a significantly reduced value and the party receiving the lump sum based upon that valuation will have received far less than what they might have been able to obtain had those assets been valued when the economy was more stable.

Wealthy husbands and wives are now looking at their rapidly decreasing assets and income and coming to the conclusion that now may be the most beneficial time to commence divorce proceedings.

There is, however, a fear that this adverse impact upon "clean break" divorces may lead parties to seek maintenance based settlements involving regular payments out of income initially calculated on the financial position at the time of the

divorce. This enables the party in receipt of maintenance to return the matter to Court at a time when the paying party's assets and income increase in order to seek a higher financial entitlement.

Now is therefore the time for a husband or wife with assets and who is considering divorce proceedings to try and effect a "clean break". If this can be achieved it will avoid the need for ongoing maintenance payments and for the receiving party to seek a recalculation once the economic climate improves.

If you wish to seek further advice with regards to divorce and financial matters, please contact Clare Ellison, a Solicitor specialising in family law, who will be able to assist. Clare can be contacted on clareellison@hhlegal.co.uk or 01704 531991.

Don't hurt the Children

Nine ways to help your children during divorce



Divorce is a traumatic time for all involved but particularly the children of divorcing parents. We look here at ways in which you can help children during a divorce.

1. Is the divorce really necessary?

"Staying together for the sake of the children" may be an old cliché, but if the relationship breakdown is not advanced, it may be the best option for all concerned. Many people give up on marriages too easily but if your situation does not involve violence or abuse then a trained marriage counsellor may be able to help you and your spouse work out your differences.

2. Don't make your children take sides

Avoid verbally attacking your spouse within your children's hearing range. Don't influence your children to force him or her to choose you as the custodial parent. If the other parent insists on involving your children in the fight, resist the urge to do the same.

3. Stay close to your children

Spend as much time as possible with your children and enjoy your time together. If you have more than one child, be sure to spend some special time with each one separately.

4. Maintain your children's routine

This is not a time to make too many additional changes to your children's life. If you can, keep the children in the home and school to which they are accustomed. If a move is necessary, make sure the children keep in contact with the children and adults to whom they are attached.

5. Don't have your children around a new romantic partner, whilst you are still married to the children's other parent

There are several reasons for this. It may complicate your divorce. It may make the other spouse angry, but most importantly it may hurt and confuse your children. It is better not to force this relationship on your children until the divorce is final, and even then you should still move slowly involving your children in your dating life on a gradual basis.

6. Be reasonable in your dealings with the other parent and the Court

Ask yourself what kind of parental behaviour is likely to affect your children's welfare. Remember that being reasonable does not mean that you have to agree with your spouse on everything. Be aware however that lawyers who follow directions from unreasonable clients can upset the Court.

7. Avoid conflict over contact periods

The most common reasons parents are unable to comply with contact orders include:-

- failure to have the children ready or to return the children on time
- failure to understand the Order
- failure to give the other parent important information
- failure to send or return the children's belongings

Make sure that you understand and comply with the stipulations of your Order.

8. Avoid conflict over child support issues

It can be very damaging for children to know that the money for their support is causing problems or that the parent is more concerned about the money, than about the children. Your children should never be asked to be a messenger from one parent to another about child support issues. Your children should be kept completely away from any child support problems.

9. Have faith in yourself as a parent

The process of divorce can cause the strongest parent to feel self-doubt and confusion. All parents have made and will make mistakes with their children. Continue to convey your strength, as well as your love, to your children.

For further details on all aspects of divorce and children matters please contact Julia Jones on 01704 531991 or juliajones@hhlegal.co.uk.



Repayment of deposits

Section 49(2) of the Law of Property Act 1925 contains provisions allowing a court to order repayment of a deposit to a buyer, if the buyer so requests, where completion does not take place and the seller does not serve a notice to complete upon the buyer. In circumstances where it would be unfair for the seller to keep the deposit the court will order repayment. A recent decision has held that contracts excluding Section 49(2) are invalid. *Aribisala v St James Homes (Grosvenor Dock)*

Inheritance Tax - Relief available



At a time of falling property and share values it is essential that full use is made of all available reliefs to reduce as much as possible any potential inheritance tax liability.

The calculation of inheritance tax (IHT) is generally based on the value of the deceased's assets as at the date of his or her death.

In order to sell the assets of the estate, the deceased's personal representatives have to obtain a Grant of Representation and this process may take several months. By the time the Grant has been obtained, and the personal representatives are in a position to sell the assets, the value of the assets may have fallen considerably.

Land sold within 4 years of death

Relief can be obtained with regard to all sales of land made within 4 years of the date of death. The sale price of all land sold can be substituted for the value as at the date of death provided an election to HM Revenue and Customs (HMRC) is made by the personal representatives. All sales must be included, even those where the sale price exceeds the valuation at death.

Sales must be true sales eg not sales

at artificially low prices between members of the same family.

If an election leads to the substitution of a lower figure then the inheritance tax bill is recalculated and a tax repayment claim can be made by the personal representatives.

Quoted shares and securities sold within 12 months

If quoted shares or securities are sold for less than the death valuation, the sale proceeds can be substituted for that figure. If this relief is claimed, it will affect all such investments sold within the 12 month period. The aggregate of the sale proceeds received on such sales is substituted for the death value. The shares or securities must be listed on the Stock Exchange and so the provisions do not apply to private company shares.

Relief is also available in cases where the investments are either cancelled without replacement within 12 months of death or suspended within 12 months of death and remain suspended on that anniversary. In the former case, there is a deemed sale for a nominal price of £1 at the time of cancellation, and in the latter case a deemed sale of the suspended investments immediately before the anniversary at their then value.

Payment of Inheritance Tax on land – instalment option

In order to obtain a Grant of Representation, personal representatives must pay all the IHT for which they are liable when they deliver their account to HMRC.

However, in the case of inheritance tax due with regard to land, the personal representatives can opt to pay that portion of the inheritance tax in 10 yearly instalments with the first instalment falling due 6 months after the end of the month of death. This is a useful facility which the personal representatives can use in order to raise the necessary IHT without having to sell the land. Interest is payable in respect of the outstanding instalments but even though the personal representative may have exercised the option to pay by instalments, they can, at any time, if they so choose and the funds to do so are available pay off the remaining instalments together with any interest which has accrued up to the date of the final payment.

Should you wish to discuss any inheritance tax issues please contact Geoff Dootson on 01704 531991 or geoffreydootson@hhlegal.co.uk



Inheritance tax is complicated and personal representatives who do not take advantage of all relief available leave themselves open to a negligence claim by disappointed beneficiaries.

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: 2 Liverpool Avenue, Ainsdale, Southport PR9 3LX 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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