

HIPs – Scope Extended

When Home Information Packs (HIPs) were introduced, on 1 August 2007, the rule was that a HIP had to be supplied when a property with four or more bedrooms was put on the market. Unsurprisingly, this led to a proliferation of 'three bedroom' properties being offered for sale which had an additional office, walk-in dressing room or similar.

The Government reacted quickly to this trend. On 17 August, it announced that HIPs and Energy Performance Certificates (EPCs) would be compulsory for all properties with three or more bedrooms put on the market after 9 September 2007.

Currently, the Government claims that a HIP costs in the

region of £250-400 and takes about five days to create. It also asserts that putting into effect the measures recommended in the EPC could save the average consumer £300 a year on their fuel bills. 'Green grants' of £100 to £300 for energy saving improvements like loft insulation are available for many homeowners.



It remains to be seen whether the result of this latest move is a glut of 'two bedroom, two office' properties. We can, however, expect to see more three bedroom houses marketed as being 'two bedroom plus home office'.

HIPs and EPCs are being held on a public register accessible via the Internet. This will allow potential buyers to confirm that the HIP or EPC is authentic and to verify its contents.

We can help you make sure your property purchase or sale runs as smoothly as possible from beginning to end.

Home Not Safe When Ex-Husband Bankrupt

It is usual for a family's biggest asset to be the family home and, in many cases, the value of the house dwarfs the value of the rest of the assets. In such cases, when a marriage breaks up the financial arrangements often allow one spouse to remain living in the house, with the other spouse entitled to a share of the proceeds when it is sold.

Recently, the Court of Appeal had to consider a case in which just such an arrangement had been made. After their divorce,

Mr and Mrs Avis agreed a consent order under which Mrs Avis stayed in the house and owned two thirds of it. Her ex-husband's entitlement was agreed as one third of the value of the house, which he could only have when it was sold.

Mr Avis was subsequently made bankrupt and some years later his trustee in bankruptcy sought an order for the sale of the house. Mrs Avis argued that the trustee took over the rights that Mr

Avis had been granted under the consent order – i.e. the right to a third of the eventual sale proceeds of the house.

The Court of Appeal could not accept Mrs Avis's argument and ruled that the trustee in bankruptcy could apply for an order to sell. Mrs Avis's right to resist a sale was qualified by the right of the other person interested in the property – in this case the trustee, who had acceded to her ex-husband's rights.

Non-Compliance with Court Ruling Means Child Custody Lost

Child custody decisions (called residence orders in legal terminology) are one of the most difficult of all areas in family law. Often, there is a great deal of acrimony between the couple who have split up. This makes the decisions regarding which parent the children will live with and what the terms of access will be for the other parent both difficult to make and difficult to make work.

The courts frequently become involved subsequent to such decisions, when allegations are made that a parent is not complying with the order of the court regarding access to the children by the other parent. In such circumstances, the approach taken by the court to the offending parent can be robust, as a recent case illustrates.

When the couple concerned separated, their son continued to live with his mother but maintained

contact with his father. The mother, however, repeatedly attempted to interfere both with the child's contact sessions with his father and with conversations between them, on one occasion becoming violent.

The mother's behaviour resulted in several court hearings and she was warned that her behaviour could lead to the son being placed in the care of his father. Eventually, the father applied for a residence order, which was granted after evidence was heard from a psychologist and a social worker, who supported the father's application. It was alleged that the mother suffered from a serious personality disorder and that despite the child's desire to remain with her, continued residence with his mother could have an adverse effect on him.

The mother appealed, arguing that the judge had given insufficient weight to the difficulties such a change might create for the child and

to the fact that he wished to remain with her.

The Court of Appeal found that the judge was entitled to reach the decision he did, based on the evidence presented, and that it could not be claimed that he had given insufficient weight to specific factors – the weight to be given to the evidence was a matter for the judge to decide.

This case shows the danger inherent in failing to comply with an order of the court regarding contact. Where necessary, the courts will act to protect the interests of the child, weighing up the long-term benefit of any change against any short-term disruption this might cause.

Contact us for advice on any family law matter.

Final Settlement – Court of Appeal Sees Sense

Wealthy builder Dennis North had a considerable shock recently when the court ordered him to pay his ex-wife, Jean, over £200,000 in financial support. Whilst such settlements are by no means uncommon, the oddity was that the couple divorced in 1978 and the financial arrangements were finalised in 1981. Multi-millionaire Mr North, now 70, quite reasonably thought that would be the end of the matter.

Mrs North had no source of income other than her settlement from her ex-husband, which included their matrimonial home and tenanted properties. She had not had any paid employment since the couple's split. She decided to emigrate to Australia and so sold all her assets in the UK before moving to an affluent suburb of Sydney. However, her stay in the Antipodes was not a happy one. Her lifestyle and bad investments conspired to reduce her circumstances considerably and she

subsequently returned to the UK. She then went to court seeking additional funds from Mr North and found the judge sympathetic. Despite agreeing that Mr North had no responsibility for his wife's reduced circumstances, she was awarded £202,000 – more than 25 years after the original settlement.



A rapid appeal to the Court of Appeal brought a degree of restoration of common sense. The judges agreed that the award was unjustifiably large. Lord Justice Thorpe commented that, "the prodigal former wife cannot hope to turn to a former husband in pursuit of a legal remedy."

Interestingly, however, the Court concluded that a settlement of a lesser amount was appropriate and later an order was made that Mrs North should be awarded £3,000 per annum from her ex-husband during their joint lives.

It is desirable whenever possible to get financial settlements right the first time. In this case, bearing in mind the long period between the couple's divorce and the later claim, it is probably something of a surprise that the Court of Appeal allowed any claim on Mr North's assets.

The division of matrimonial assets on divorce proves the old adage that you get what you negotiate, not what you deserve. Our matrimonial team is experienced in helping people get through the trauma of divorce and in achieving a fair financial settlement.

Finders, Keepers?

The recent and rather unsavoury news footage of people helping themselves to spilled cargo, following the beaching of the MV Napoli on the South Devon coast, has brought to the fore the question of whether beachcombers and others have the right to keep goods washed up on the shore as 'the sea's bounty'.

Strictly, any item washed ashore from a ship, whether wrecked or not, constitutes 'wreck' under the law. Such goods belong to whoever had title to them before they fell into the sea. Where the goods are washed up as the result of a shipwreck, they must be declared to the receiver of the wreck, by the person finding them, within 28 days. The receiver may subsequently pass them back to the finder (if the owner cannot be found). Otherwise, a payment for the

salvage of the goods may be payable by the receiver to the finder.

Failure to report items of wreck found is a criminal offence and the retention of goods 'unofficially salvaged' could lead to a prosecution for theft.



The position relating to buried treasure is completely different. If something has been found buried, is made substantially of gold or silver and its owners or their heirs are unknown, it will be classed as 'treasure'. In some instances, the pre-1996 requirement that such items had to have been buried with the intention that they would be recovered still remains. Discoveries of treasure must be reported to the local coroner and it is a criminal offence not to report them. It is also necessary to report any finds to the landowner. The coroner will decide on the fate of the treasure and the finder is entitled to a finder's fee if the find is ruled to be treasure. In such cases, ownership passes to the Crown.

LPAs and Advance Directives

One of the changes introduced by the Mental Capacity Act 2005 is that from 1 October 2007 the Enduring Power of Attorney (EPA) has been replaced with a revised type of power called a Lasting Power of Attorney (LPA). However, EPAs made prior to 1 October will continue to be valid.

An LPA allows a donor to nominate one or more attorneys to make decisions should they lose the mental capacity to do so themselves. Unlike the EPA, an LPA will need to be registered with the Court of Protection before it may be used by the attorney(s). A person can make two types of LPA, one dealing with financial matters (as do EPAs) and one concerning personal welfare. A Personal Welfare LPA (PWLPA) can

be used to set up an 'advance directive' regarding giving or refusing medical treatment in circumstances where the donor has lost the capacity to make such decisions themselves. The PWLPA is legally binding if it is valid and applicable to the treatment proposed. This new power has caused anxiety for some people, who worry that making a PWLPA might allow a relative to 'pull the plug' when they themselves might not wish that to happen.

No matter what the PWLPA states, the final decision regarding any treatment given will rest with the responsible clinician. The PWLPA cannot compel treatment to be given which is contrary to medical advice.

There are considerable legal safeguards built into advance directives, which in any event will only apply when the person creating the directive no longer has mental capacity. Where there is genuine disagreement about the existence, validity or applicability of an advance decision, those providing care or treatment will be able to apply for a ruling from the Court of Protection.

Whilst it is obvious that an LPA should always be drawn up with the benefit of professional advice, it will come as a relief to many to know that there are strong legal safeguards. If you need advice on how to deal with your affairs, or those of a family member, in the event that mental capacity is lost, contact us.

Estate Returns – Random Checks

HM Revenue and Customs (HMRC) have announced that they are to commence carrying out random reviews of returns lodged with them for Inheritance Tax (IHT) purposes. According to a recent newsletter, reviews will concentrate in particular on looking at gifts made by the deceased in the seven years prior to death. Such gifts, unless covered by one of the IHT exemptions, need to be taken into account when calculating the value of the estate for IHT purposes.

Harsher Penalties for Failing to Disclose Driver

It is not uncommon for the police to have difficulty identifying the actual driver of a vehicle caught on camera exceeding the legal speed limit.

In UK law there is a duty under the Road Traffic Offenders Act which requires the registered keeper of a vehicle to give information about the driver of the vehicle in certain circumstances. The fact that this is a requirement should be known by drivers and the penalties for failure to provide the information are not custodial – neither is an offence committed if the registered keeper

is genuinely unable to give the information sought. Accordingly, the requirement is not an infringement of the right not to incriminate oneself.



New speed cameras are gradually being introduced which will photograph the driver in sufficient detail to make identification possible in most instances. However, under changes in the law which came into force on 24 September 2007, harsher penalties will be meted out to motorists who fail to disclose who was driving when a speeding offence was committed. The courts can now impose six penalty points on a driver's licence, rather than the previous maximum of three points.

HMRC Set Sights on 100,000 More Taxpayers

HM Revenue and Customs (HMRC) have announced that they intend to open enquiries into at least 100,000 taxpayers who have failed to comply with the amnesty, which ended on 22 June 2007, for disclosure of undeclared income arising on bank accounts held offshore. This

represents a significant increase in the number of taxpayers thought likely to be targeted and implies that HMRC's current enquiries in this area have indicated that the potential tax yield is likely to be greater than their original estimates led them to believe.

It has also been announced that, eventually, the accounts of all 400,000 offshore account holders known to HMRC will have their accounts reviewed.



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