

Westgate Point, Westgate, Leeds, LS1 2AX

Tel: 0113 243 6601 / Fax: 0113 234 5088

Web: forwarn.com

email: clientmail@forwarn.com



Client Newsletter

FAMILY LAW, DOMESTIC PROPERTY, WILLS, PROBATE AND TAX PLANNING

- [Budget Update – IHT & CGT](#)

- [Budget Update - Stamp Duty](#)

Budget Update: Inheritance Tax & Capital Gains Tax

The Nil Rate Band for Inheritance Tax will remain at £325,000 until April 2015. The Nil Rate Band is the tax-free amount for each person at their death.

The threshold for Capital Gains Tax will remain at £10,100 through 2010-11 for individuals, and half this level for trusts.

The static Inheritance Tax threshold means that Wills become more important in terms of planning for Inheritance Tax.

Currently, each couple has the benefit of two Nil Rate Bands, totalling £650,000. If one spouse or civil partner dies, leaving everything to the survivor, then the executors for the survivor can claim, on their death, both Nil Rate Bands. In most cases, then, couples will benefit from £650,000 tax-free if they do nothing. It is possible to increase the amount of £650,000.

If the first to die provides in their Will for a trust to hold their Nil Rate Band, this can increase in value over time, and remain tax-free. This works if, when the first spouse dies, their trust holds part of the matrimonial home. With property prices rising again, the value of the trust will rise. As long as the correct trust deeds are put in place, the rise in value of the trust remains tax-free.

If in the course of 4 years, property prices rise 50%, then the value of the trust after this time would have grown from £325,000 to £487,500. The survivor would themselves have £325,000 tax-free but the combined amount that is tax-free would now be £812,500.

Clearly, if property prices fall, the Will would not save Inheritance Tax, and you could be worse off but

- [What about the Grandparents?](#)

- [Should I sell my Property at Auction?](#)

Budget Update: Inheritance Tax & Capital Gains Tax continued.....

further falls in property prices are not thought likely over the next few years.

There are pros and cons of making Wills such as this, and you should receive full advice before going ahead. We are happy to give such advice as you may require.

Budget Update: Stamp Duty

Two changes were made to Stamp Duty Land Tax (SDLT) in the recent budget on 25 March:

1 A two year holiday period from SDLT for first time property buyers

The following criteria must be met:

- An individual or individuals must jointly purchase a major interest in land which is wholly residential, and
- the consideration must be more than £125,000 but not more than £250,000, and
- the individual(s) intend to occupy the property as their main residence, and
- they have not previously purchased such an interest or its equivalent anywhere in the world, and
- the effective date of the transaction is on or after 25 March 2010 and before 25 March 2012

2 A new rate of SDLT for expensive properties:

The new rate will be 5% for transactions in residential property where the consideration for the transaction exceeds £1 million.

This new rate will apply to residential purchases completing on or after 6 April 2011.

Family Law: What about the Grandparents?

Grandparents have an important role to play in the upbringing of children. Research by Families Need Fathers, the Grandparents Association and the Family Matters Institute indicates that 42% of grandparents lose contact with their grandchildren when their parents separate. What can grandparents do about this?

The current law

Currently the law requires grandparents to have the permission of the court to apply for contact or residence orders (commonly known as access and custody). This creates an additional hoop that grandparents have to jump through just to get their application before a court, which adds delay and expense. In relation to residence disputes, the traditional approach of the courts has been to apply a biological parent presumption, so that even where the grandparents have been the defacto primary carers of a child for years, a biological parent making an application for residence would almost always win.

In public law proceedings, i.e. care and related proceedings brought by a Local Authority in relation to a child, a grandparent is not entitled to automatic legal aid in the same way that parents are. A grandparent wishing to care for a grandchild, unless they have the support of Local Authority, will have to finance their legal costs privately.

Recent developments

Things are changing. There has been a slight shift in attitudes in the courts. In the 2009 Supreme Court case of *Re B*, the court emphasised that the paramount consideration is the child's best interests, rather than a particular significance of parenthood.

The Government Green Paper "Support for All – the Families and Relationships", currently out for consultation, makes proposals directed at improving the ability of grandparents to apply for contact by removing the permission requirement (known as "leave") and improving the information available to grandparents who want to maintain their relationships with their grandchildren after parental separation and divorce. The closing date for responses to the consultation is 21 April 2010.

The future

The main political parties have family friendly policies at the heart of their core message to voters, with the emphasis being on supporting existing family structures. Whichever party comes out on top at the election it is likely that reforms along the lines of the Green Paper will be implemented in due course.

Should I sell my Property at Auction?

Statistics say that about one in every twenty properties are sold via auction sales. As a seller the major advantage is that at the fall of the hammer the property is legally sold and the buyer has usually 28 days within which to pay for it. The ten per cent deposit is paid on the day and the paperwork sent to the buyers' conveyancer. At this point the buyer is legally bound to buy the property on the completion date.

Prior to the auction your conveyancer will organise an auction contract supported by a copy of the Deeds, local authority search and possibly an environmental search. This pack is sent to the auctioneers at least two weeks prior to the auction day and is available for inspection by potential buyers and their conveyancers.

It is the buyers' responsibility to ensure they have their finances in place and instructed their conveyancer to inspect the contract pack before the day of the auction.

More often than not potential buyers will make an offer on the property prior to the auction. This will provide an indication as to the level of interest in the property. Your selling auction agent will advise you of the merits of the offers. It is unlikely they will advise you to accept an offer prior to auction unless there is little interest in the property. Or, of course, unless the offer is too good to refuse!

From placing the property on the market to legal completion of the sale will in standard circumstances span a period of about ten weeks. The completion of the sale is therefore dealt with quickly and avoids the problems associated with a chain of transactions and the potential of delay or the chain failing. It is a very positive way to sell a property especially an empty one.

There are a number of local estate agent practises who hold auctions on a regular basis. Details can be found in the weekly property supplement contained in the Friday edition of the Yorkshire Evening Post.

PAUL MILLIGAN is a Partner and Head of the Family Department specialising in divorce, related financial cases and cases involving children.
email: paul.milligan@forwarn.com

BEN LOWE is an Associate and has extensive experience in planning Inheritance Tax savings, administering estates and drafting Wills and Powers of Attorney
email: ben.lowe@forwarn.com

JOHN ROBSON heads the Domestic Property Department and has over 30 years of conveyancing experience and significant experience in employee relocation transactions.
email: john.robson@forwarn.com

The material contained in this newsletter is for information purposes only. It does not constitute comprehensive legal advice and should not be relied upon as such. Professional advice should always be taken for specific legal problems.

excellence and endeavour