

If you have any questions, please call 0113 243 6601 and ask for:

- **Family Law** – Paul Milligan
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Private Client Newsletter

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Lasting Powers of Attorney - Developments

A Power of Attorney is a very useful document if you or a loved one becomes very ill, frail, or incapacitated.

A new form of Power of Attorney, a Lasting Power of Attorney, was introduced in October 2007. There were two types, one for property and money, and the other for care and medical decisions. However, this document was long, cumbersome and difficult to follow.

As from 1 October 2009, the Office of the Public Guardian have introduced new improved versions of both types of Lasting Power of Attorney, in an attempt to eradicate the difficulties experienced by many in the last two years.

It is hoped that this will make the entire Lasting Power of Attorney process far quicker and easier for clients to understand.

Ford & Warren's Wills and Probate department can provide advice on the decisions required in respect of preparing Lasting Powers of Attorney for you, and setting up Lasting Powers of Attorney, as well as acting as a person's certificate provider. We also give advice on the registration process.

Inheritance Tax

The amount that can pass free of inheritance tax on death rose to £325,000 on 5 April 2009. It rises again to £350,000 on 5 April 2010. Contact us if you wish to receive advice about reducing the risk of inheritance tax.

Intestacy - changes since February 2009

On 1 February 2009, changes were made to the statutory amounts payable on the death of a first spouse or civil partner who dies without making a Will.

The statutory amount which can pass to a surviving spouse or civil partner where there are children was increased from £125,000 to £250,000. The survivor also receives the personal effects and a life interest in half of the residue. The children receive half of the residue at the age of 18 and will receive the other half of the residue in which the surviving spouse or civil partner has a life interest when that spouse or civil partner dies.

The statutory amount which can pass to a surviving spouse or civil partner where there are no children but there are parents or brothers and sisters and their children was increased from £200,000 to £450,000. In addition the survivor receives all personal effects and half of the residue (assuming of course that the deceased's estate is worth more than £450,000). The other half of the residue passes to the deceased's parents, if any, failing which, equally between brothers and sisters of the deceased and their children, and so on.

Having a valid, up to date Will, provides more certainty for your loved ones, and ensures that you choose your beneficiaries rather than your estate being left to be divided in accordance with the Intestacy Rules.

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Domestic Property – showing signs of recovery

The Domestic Property department has seen a welcome increase in workload over the last few months.

John Robson, Head of Domestic Property says there is clear evidence of a recovery in the housing market. Sale and purchase instructions are on the up. Initially, this increase in workload seemed to come, in the main part, from cash buyers and developers, but the recent months have seen an upturn in individuals buying and selling.

The first-time buyers market is still slow, given the restrictions on obtaining mortgages, but it is hoped that this sector will soon show a recovery.

For advice on buying and selling residential property, contact John Robson.

Contact Law Enforcement

As from 8 December 2008, the Children Act was amended with a view to trying to assist with the enforcement of contact orders. New powers have been provided to the courts to include:

- Ordering parents to attend parenting classes.
- To pay compensation.
- To carry out unpaid community work.

Before the Judge can impose such conditions, a warning notice has to be served and the court must be satisfied to the criminal standard, that is beyond all reasonable doubt, that the parent has failed to comply with the contact order before the sanctions can be imposed. A year on, very few orders have been made under these new provisions, but it is thought that this is because there has been little publicity of the courts powers and that in future years these tools the courts have will be used more and more to ensure that the contact ordered works.

Pre and Post-Nuptial Agreements

Until recently pre-nuptial agreements have been void as they have been against public policy. The state has not wanted to undermine the institution of marriage and marriage being for life. Recent developments have made vast inroads into this long established principal. Under the Matrimonial Causes Act, the Judge is directed to look at all the circumstances of the case. One of the circumstances, upon which the courts are now prepared to give added weight to, is whether any pre-nuptial contract has been entered into by the parties. A post-nuptial agreement, i.e. one entered into after marriage, it has recently been confirmed, is to be binding on the parties.

There are safe-guards, however. Both parties should have received independent legal advice, both parties should have given full and frank disclosure as to their financial means and the agreement must broadly speaking be fair.

Parliament is considering amending the legislation in order to make pre-nuptial settlements binding.

Bearing in mind the average length of marriage is now 10 years, all people either in the process of tying the knot or approaching a sticky patch in their marriage should consider forming a contract.

Partners who are cohabiting can already form legally binding agreements setting out how they will share assets on separation.

Care Home Fees Announcement

Gordon Brown recently announced a pot of £350 million to provide towards care home fees for people suffering from particular diseases.

This is not what it seems. It will plug one small gap, in helping some people suffering severely from Alzheimer's or Parkinson's disease. The amount involved would only fund full-time care for around 10-12,000 people. Also, will the policy survive the next election?

We can offer advice to anyone concerned about the risk of full-time care, and wanting to protect their assets. We will return to this in a future issue.