

Viewpoint

Helping you plan your family's future

Winter edition

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Welcome to our Winter edition of Viewpoint



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We have been delighted this Winter to continue our support of the local charity, St Peter's Hospice, with their "Make a Will Week".

There are countless reasons why you should make your Will. Why not take a quick look at our **Ten Good Reasons to make a will** document online at www.vww.co.uk/site/services/privateclient

Our Bristol Private Client Team had cause for celebration this Autumn. We were described as 'superb' and having 'a real emphasis on client care' by the recently-published **Legal 500**, the nationally-acclaimed guide to the legal market.

Also this month, Oliver Early and our Family Team have been following the outcome of the multi-million pound divorce case of *Radmacher v Granatino*, which some of you will have read about recently in the national press. This case sets new precedents for the UK regarding the validity of pre-nuptial agreements and brings the UK closer in line with the status that such agreements enjoy throughout the rest of Europe.

I hope that you enjoy this edition of Viewpoint, in which our guest contributor, John Lowe of Equity Advice LLP, writes about equity release schemes and their role in financial planning for your retirement. Our other articles discuss protecting the elderly from financial abuse, how the law can enforce broken promises, and what you need to know before you lend money to your children to buy a marital home.

Finally, our Winter edition would not be complete without our popular hamper prize draw. We value your comments and I look forward to receiving your feedback in the enclosed questionnaire, so that you may be entered for the draw.



The bank of Mum and Dad - why loan agreements are essential

With young married couples finding it harder than ever to purchase their own home it is common place for the marital home to be purchased with the assistance of a "loan" from one of the couple's parents.

It is equally common to find that no legal agreement exists governing the terms of the loan and its repayment. In our family team, we occasionally find that parties have signed a written open agreement. However, it is usually made in the vaguest of terms, with no provision for interest or a fixed repayment date. Instead it will contain phrases such as "to be repaid when the property is sold if they can afford it" or "when the children grow up."

Hardly ever are the respective son or daughter-in-law mentioned in such agreements so their liability for repayment is not specified. In such cases, the parents' benevolence can back-fire if the couple divorce.

What happens to the loan if your child gets divorced?

The danger with these loose "family arrangements" is that the "loan" can appear to be a gift and if it is regarded as such, the divorce Court will treat the "loan" as being part of the assets of the divorcing couple. It is rarely disputed that the parents had "loaned" the money, the dispute always centres on the extent of their contribution. The vague circumstances surrounding such loans often leads to them being treated as outright gifts.

If the Court considers the loan to be just that and not a gift, the parents are still not out of the woods in terms of reclaiming their money. The concept of a "soft loan" is one that is often heard in divorce proceedings.

In such cases, the Court accepts that there was a loan, but they consider the reality to be that its repayment is not necessarily expected by the parents in the absence of a clearly worded

document. This sort of decision is unhelpful if the parents then decide to take action to demand that the loan be repaid.

Another consideration for parents to bear in mind is that their own circumstances may change to the extent that they are not able to make the same sort of provisions for any other children as they might have wished and there may be insufficient assets left to rectify that. This can lead to conflict between siblings which might not be redressed on their anticipated inheritance.

How can you avoid falling into the traps described above?

In truth you can never be 100% certain of what will prove successful but the best protection to put in place is to ensure that you have a properly drawn loan agreement signed by all parties. This should make provision for repayment which is clear and leave no scope for suggesting that it is not a loan in the proper sense.

You might also consider linking repayment to the particular circumstances and specify that the money is repayable should the parties divorce. We suggest that you always include your child's spouse as a party to the agreement so that there can be no ambiguity as to their understanding of the situation.

If you would like more information please contact Oliver Early.



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Releasing funds for your retirement

Equity Release in its broadest sense means converting housing wealth into cash by downsizing, selling to rent, taking an interest-only mortgage or remortgaging. But these methods are quite distinct from the Financial Services Authority (FSA) regulated products offered by Safe Home Income Plans (SHIP) members, Lifetime Mortgages and Home Reversion Plans.

With a Lifetime Mortgage a funder lends the homeowner cash in return for a mortgage charge over their home.

Home Reversion Plans involve a funder buying all or part of the client's home at a discount based on an assumed life expectancy of the client. A "lease for life" is granted guaranteeing rent-free tenure.

There are many common misconceptions relating to equity release products, particularly concerning the level of risk. Consumers mistakenly think using equity release means running the risk of being repossessed, falling into negative equity or having to move into care. Today there are stringent safeguards and regulations in place. Regulated SHIP products have a "no negative equity" guarantee and guaranteed security of tenure.

If using family finance or down-sizing doesn't work, equity release can play an important role in enabling people to enjoy the retirement they want. Rather than being considered an option of last resort, it is now a key component of today's retirement planning toolkit.

For more information please contact John Lowe at Equity Advice LLP on john.lowe@equityadvice.co.uk



Financial abuse of the elderly - would you know what to look out for?

Life can throw us many challenges and many of our clients find themselves caring for an elderly relative, partner or friend without any prior warning.

As a result, there is no training or particular skill-set to equip carers to fully protect and look after their nearest and dearest. One of the easiest traps for the elderly and vulnerable to fall into is financial abuse from illegitimate sales calls and other unscrupulous parties and ensuring that your loved one's finances are protected is an important aspect of providing care.

What is financial abuse?

Financial abuse includes theft, fraud, pressure from abusers in connection with Wills or financial transactions, or misappropriation of benefits.

In practice, this means that carers need to be on the look out to prevent their loved one becoming the victim of financial abuse. Indicators which could arouse suspicion are:

- Your loved one appears estranged from their own family and becomes very close to people who are unfamiliar to you.
- They appear to be going without things that they should be able to afford, such as new clothes, toiletries etc.
- The unexplained disappearance of belongings, such as jewellery.
- The unexplained sudden transfer of funds to or large withdrawals from a bank account by someone outside the family.
- They start to make abrupt changes to their Will or create a new Will for no apparent reason.

A case in point

A relatively recent case serves as good example. In '*Richards v Allan*', an elderly lady called Olive, aged 84, made a Will leaving everything to her acquaintance, Miss Allan. Olive had

previously worked part-time for Miss Allan in her antiques shop although this employment had ceased seven years beforehand.

After Olive stopped working at the shop, Miss Allan had occasionally visited Olive at home who was elderly and suffering from diabetes. During one of these visits, Miss Allan encouraged Olive to make a Will, which was subsequently drawn up. Olive's family received no legacies, instead Miss Allan was named beneficiary of Olive's whole Estate. Less than a year later, Olive died but her Will was challenged on the grounds of lack of testamentary capacity. The challenge was successful and the Will declared invalid. This case shows how care must be taken when Will instructions are given to prevent this kind of challenge in the first place. The importance of receiving sound legal advice where capacity could be in issue is paramount.

How we can help

We, as solicitors, can help if you have concerns about someone you care for. Members of our team are specialists in Elderly Client law and members of Solicitors for the Elderly, an organisation set up for those who advise the elderly or their carers. We are trained to guide you through the action you can take to deal with this most upsetting of situations both sensitively and effectively.

Please contact Annette Ford (member of Solicitors for the Elderly)



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Promises, promises - how the law can enforce broken ones

Recent legal developments have made it easier to bring a claim against a person or their Estate to enforce a promise which they have made, but not honoured.

A recent leading House of Lords case, *Thorner v Major* illustrates how this legal principle works. It concerned a young Somerset farmer, David Thorner, who had worked on a farm all his life for very little pay. The owner of the farm, his father's cousin, Peter Thorner, had encouraged him to spend his time working on the farm and as a result, David had given up the possibility of working elsewhere and devoted his life to the farm.

Although Peter had not said so in so many words, Peter's actions and comments over the years, meant David had come to expect that he would inherit the farm when Peter died. Peter had never said directly that he would give the farm to David and no documents were signed or written agreements made.

When he died, Peter didn't leave David the farm in his Will as he had expected. David, however, felt that he should be entitled to the farm because he had worked hard on it for many years on the understanding that he would inherit it one day.

Under a complex legal concept known as proprietary estoppel, it is possible to bring a claim against a person or their Estate if three essential steps have been taken.

Firstly, the person complaining of unjust treatment has to show that he has relied on a promise, and secondly, they have suffered hardship as a result of relying on that promise. Thirdly, the Court has to consider that it would be unfair for the person making the promise to go back on it.

In these situations, the person relying on such a promise can claim that they are entitled to be compensated for what they have lost. If successful, the Court can make a number of awards, which can result in property being transferred to them, or by receiving a financial settlement. David successfully relied on this argument, and became entitled to the farm as a result.

Courts will look at all the facts of a case and make a conclusion based on conduct, words, and other relevant circumstances.

Interestingly, a simple phrase from Peter (who was described by the Judge as a farmer of few words), telling David about certain animal troughs freezing over in winter and the handing over of an insurance policy to cover death duties, was enough for the Court to conclude that through both actions and words, David had been promised the farm.

Although David was successful in his claim for the farm, this case provides another salutary lesson in the need to properly record and document these sorts of family agreements.

Our contentious Probate Team have successfully acted for clients who have relied on promises so that they are compensated for the loss they have suffered. We will be happy to advise if you think you have suffered financial loss as a result of a broken promise made to you.

If you would like further information please contact Michelle Rose.



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