



Viewpoint

- First Time Seller? Easy Steps to Make Sure You Are Ready to Sell
- Life Interest Trusts for Unmarried Couples
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Welcome to the Autumn 2023 Edition of Viewpoint



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As the holiday season draws to a close, I am delighted to welcome a new family partner, Bindu Malkan, who will be based in our Watford office, as our highly regarded family team continues to expand across all our offices.

As the new academic year begins, we often return our attention back to our to do lists. If you or a family member have

decided to brave the current, uncertain market and are selling a property for the first time, we feature some important factors in this newsletter which you might like to consider.

Tax remains a topic that many of our readers regularly request updates about, so I am pleased to be able to feature an article about inheritance tax planning in this edition. If this leaves you with more questions than we have answered - please do sign up to our on-line workshop, taking place at the end of September. Our annual workshop featuring all things to do with Lasting

Powers of Attorney will also take place again this Autumn - we hope to see many of you there. You will find details of how to register to attend any of our workshops later in this newsletter.

Finally, an interesting case about a Welsh family caught my attention recently - sadly, an all too familiar set of circumstances for my team. I hope by highlighting what can happen when an elderly parent starts to become isolated, we can perhaps help others to attempt to avoid similar situations.

I hope you enjoy reading this edition.

First Time Seller? Easy Steps to Make Sure You Are Ready to Sell

Have you lived in your home for years and are currently thinking of moving? Are you wondering how has the process changed? What do I need to do?

You are likely to find the conveyancing process much more complex and demanding. The requirements have changed in relation to Freehold Rent Charges and if you live in a flat there are now rules around fire safety and cladding to name a few! You will find much more information is now required to sell your home and it pays to make sure your paperwork is in order.

So what should you do to ensure your property is ready when you secure that buyer and start the moving process?

5 Points to Consider Before Selling

1. Changes to the Structure of the Property

Have you made any changes to the structure of the property which would have been subject to local planning and building regulations? Have a look for paperwork you received at the time

from planning and building control, such as completion certificates and planning documents.

2. Legal Title

The legal title to the property often causes issues. Dig out those old title deeds and ensure you give them to your solicitor as soon as possible in case your property is unregistered at the Land Registry.

3. Rent Charge

Do you remember paying a minimal sum to a rent charge owner years ago? Did you pay a larger sum to redeem? Look for evidence, for example receipts or redemption certificates.

4. Paperwork

Any changes to windows, doors, electrics, boilers or log burners that have been made in recent years will also have required building control. Look for your FENSA, ELESKA, GASSAFE or HETAS certificates and provide them to your solicitor.

5. Selling a Leasehold Property

Due to recent changes in legislation following The Building Safety Act 2022 check to see if your property is a

'Relevant Building' from the outset and check to see if the Building has up to date Asbestos and Fire Reports.

There is much to consider when selling your home, not just tidying for that first viewing. Review your paperwork in advance to avoid unnecessary difficulties and delays with the conveyancing process.

For help or advice, please contact:



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Life Interest Trusts for Unmarried Couples

A life interest trust is a legal arrangement that allows an individual, known as the “life tenant,” to benefit from the income or use of specified assets, for their lifetime or until a specified event.

The life tenant has the immediate right to receive the income from the trust property or have the use or enjoyment of it (e.g. living in a property). After the life tenant's death, the assets held within the trust are then transferred to the beneficiaries, who are often children or other loved ones.

Unmarried couples do not benefit from the same inheritance tax savings as married couples and those in civil partnerships. The biggest disadvantage for unmarried couples is the lack of spousal exemption. The spousal exemption allows married couples, and those in civil partnerships, to leave assets to the surviving spouse on death without incurring any inheritance tax.

Married couples and those in a civil partnership also benefit from the unused nil rate band. This allows any unused nil rate band allowances from the first spouse's death to be transferred to, and used for the benefit of, the second spouse's estate on death. In contrast, unmarried couples are subject to inheritance tax at 40% on the transfer of assets between themselves on death over and above the nil rate band.

Life interest trusts for unmarried couples can offer some advantages for inheritance tax planning and asset protection, such as allowing the surviving partner to be financially secure and protecting assets from potential claims by third parties or other family

members of the life tenant. It also allows the deceased partner to retain a level of control over the distribution of their assets. However, there are several disadvantages too. Some of these are:

1. The transfer of assets to trust on death will be subject to inheritance tax of 40% over the nil rate band available to the estate.
2. The assets in the trust will be seen as assets of the surviving partner (for tax purposes only), the ‘life tenant’ and taxed again on their death at 40% for any assets transferred over the nil rate band available to the estate.
3. The deceased's estate will lose their residence nil rate band allowance if it is not utilised on the first death.
4. The surviving partner has limited access to the capital in the trust, which limits their financial flexibility (although provision can be made to allow trustees to provide access to capital).
5. Though entitled to the income, the surviving partner does not have control over the assets in the trust.
6. The trustees would need to take into consideration the wishes of the life tenant and the remainder beneficiaries. If the interests are not aligned then this can lead to disputes.
7. As the assets in the trust are seen as part of the life tenant's estate, it may impact the surviving partner's eligibility for means tested benefits. The income and assets of the trust may be considered when assessing the surviving partners financial situation.
8. Life interest trusts can't be revoked once the testator has died, but can be brought to an end by the trustees and the life tenant, if in agreement.

Unmarried couples should carefully consider what the life interest trust should apply to - the family home, investment assets, or their entire estate and how they would like their children or remainder beneficiaries to benefit, before leaving a life interest trust to the surviving partner. Careful consideration should also be given to the inheritance tax consequences of such a trust.

There are a number of issues to consider when deciding if a life interest trust is right for you. If you would like to find out more about life interest trusts please do get in touch.

For help or advice, please contact:



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Free Online Workshops

The workshops detailed below will be held online via Zoom and are an opportunity for you to have your questions answered. We hope to see you there!

Inheritance Tax Planning - 27 September 2023, 4.00 - 6.00pm

Careful estate planning can significantly reduce the inheritance tax bill on your death. This session will explain the popular methods for reducing your inheritance tax bill.

Lasting Power of Attorney - 15 November 2023 - 3.00 - 5.00 pm

We will ensure both you and your attorney know of your duties and responsibilities. This workshop will also assist those of you who are yet to put in place a Lasting Power of Attorney.

Contact our Events team on **0117 992 9730** or at **events@vwwplus.co.uk** to register your place.

The Case of the “Influential” Daughter...Jones v Jones

In a recent court case, the family of the late Daphne Jones found themselves entangled in a dispute over her will, which left all her property to one of her four daughters, Ceri Jones.

As the story unfolds, we see how Ceri's actions led to the invalidation of the will due to undue influence, and how this serves as a cautionary tale for everyone involved in estate planning.

Daphne's Story

Daphne, an elderly woman with declining health, needed more care and support in her final days. Ceri stepped in, moving in with her mother to provide assistance. However, Ceri's involvement took a darker turn as she began isolating her mother from the rest of the family. Ceri moved in with her mother after her sister Vicky's death and made it increasingly difficult for other family members to visit or speak with Daphne, creating an environment where Daphne became solely dependent on Ceri. This isolation made Daphne more vulnerable and susceptible to Ceri's influence, setting the stage for a complex legal battle over Daphne's estate.

During Ceri's time living with her mother she spread false rumours about her sisters, claiming they had taken money from their mother without her knowledge or consent. By repeating these false claims to Daphne, Ceri likely influenced her mother's beliefs and decisions regarding her estate, further driving a wedge between Daphne and the rest of her family.

When Daphne's brother Edwin tried to help her prepare a will that would share her house equally among all four daughters, Ceri intervened. It seems likely that she terminated the solicitor's instructions, ensuring that the will would be prepared according to her wishes, which included inheriting the house herself.

Ceri also played a significant role in the preparation of the will, which was executed without the involvement of a solicitor or a further medical examination. Despite her attempts to distance herself from the making of the will, the court found it likely that Ceri was heavily involved in its creation, casting doubt on the legitimacy of the document. Ceri also interfered with a social worker's attempts to assess her mother's capacity. By blocking the social worker's access, Ceri further complicated the situation and made it more difficult for the court to determine the true intentions of Daphne regarding her estate.

After the will was signed, Ceri misled police officers by claiming that her mother had been assessed as having capacity and had signed documents in front of a solicitor. The court found this to be untrue and instead, considered that it was further evidence of Ceri's attempts to control the situation surrounding her mother's will. This deception by Ceri raised even more questions about the validity of the will and the circumstances surrounding its creation.

Ceri's actions, combined with Daphne's physical and mental vulnerabilities, led the court to conclude that the will was the product of undue influence exerted by Ceri. As a result, the will was declared invalid, and, as Daphne had not made an earlier will, the court ruled that her estate should be administered based on the law of intestacy. As a consequence, Daphne's assets will now be divided equally between her four daughters rather than Ceri inheriting her whole estate as she had planned with the provisions of the now-invalid will.

This case highlights the importance of ensuring that a person's wishes are genuinely their own and not the result of undue influence by others - easier said than done. It is notoriously difficult to gather direct evidence of undue influence especially in circumstances where one member of a family or a new care giver has entered an elderly person's

life and has set about isolating that person.

Daphne's story is sadly all too familiar to our Contentious Trusts and Probate team who have dealt with many similar cases over the years. We are well versed in forensically identifying and gathering the evidence which is needed to ensure a person's true final wishes are respected and upheld.

A Stitch in Time

If you know of a situation where you suspect an elderly person might be the subject of undue influence please do get in touch. We can advise on the steps which can be taken in a person's lifetime which might help to avoid the situation which Daphne's family sadly had to contend with as well avoiding the legal costs which will have undoubtedly eroded the value of Daphne's estate.

Finally, it may be of comfort for you to know that our Wills and Estates team are always on high alert in respect of spotting these sorts of suspicious circumstances. All members of the team are trained to look out for the red flags which call for the assistance of our contentious team to help avoid a future dispute.

For further advice, please contact:



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