Your life & the law

Newsletter for private clients

willans

Willans LLP | solicitors

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Welcome

In this edition, our lawyers take a look at a range of issues across the areas of wills, trusts & probate, residential property and dispute resolution. From the importance of using trusts to help make sure your assets go to those you want them to, through to the dangers of out of date wills for the baby boomer generation, there's plenty in here to help you keep informed when planning your estate and your family's future.

We hope you and your families are keeping safe and well. As always, if there is anything we can help you with, please do get in touch.

Bridget Redmond managing partner

A growing team & promotions to celebrate

We are delighted to announce the appointment of two new partners and a range of senior promotions across the firm.

Adam Hale has become a partner after three years as senior associate in the firm's agriculture & estates team. **Simon Hodges** has also re-joined the firm as a partner in the residential property team.

Wills, trusts & probate specialists **Miranda Hawkes** and **Tom O'Riordan** become associates, as does residential property lawyer **Mary Young**.

Bridget Redmond, managing partner, commented: "I am delighted to welcome Simon to our team and am really proud of Adam, Mary, Miranda and Tom; I look forward to seeing all of them thrive as partners and associates, respectively.

"Each has shown clear commitment to providing clients with first-class legal advice in a responsive, approachable way. That is very much the Willans ethos and it is why we have earned the trust of generations of clients." ■

Adam Hale, partner, agriculture & estates

Simon Hodges, partner, residential property

Join us for a (virtual) coffee to discuss planning for the future

Since we cannot meet face-to-face to discuss your will and other lifetime planning considerations or to discuss your property needs, we've taken our popular coffee mornings online.

Our wills, trusts & probate and residential property lawyers are offering 20 minutes of their expertise on a no-obligation basis to help answer your queries.

If you'd like to speak to a financial advisor, we've once again teamed up with RT Financial Planners who are also offering free consultations during the coffee morning.

The event will take place on 9 April, but your appointment will need to be booked in advance of the day at **willans.co.uk/coffeemorning**. ■

Warning for remarried 'baby boomers': Check that your will is up to date

Remarried couples with complex family arrangements have been urged to ensure their wills are up to date, by a professional association that specialises in succession planning.

The calls come from STEP (the Society of Trust and Estate Practitioners) after an analysis shows that couples from the remarriage boom of the 1990s and early 2000s are now likely to be entering retirement.

According to the Office for National Statistics, remarriages in England and Wales reached all-time highs of up to 46,000 per year in the late 1990s and early 2000s –at which time the post-war baby boomers hit middle age.

With the baby boomer cohort now in or approaching retirement, it is key that remarried couples in that age group ensure their wills are up to date. Marriage or civil partnership automatically revokes previous wills; this can make providing for loved ones complex and even lead to inheritance disputes after death, particularly where there are multiple children.

Couples who are currently considering divorce should think carefully about their wills too. Divorce does not automatically revoke your will, but it can complicate matters; it will be read as though your ex-spouse is not in it.

Partner and head of our divorce & family law team, Sharon Giles, said "Depending on your individual situation, divorce can be a long process, sometimes taking up to 6 months or more. There is, therefore, a risk that your estate could be distributed in a way you wouldn't have wanted, if you die before the decree absolute is issued.

"It's always a sensible idea to keep your will up-to-date and under regular review, especially if your family situation is complex."

With this in mind, it's always sensible to speak to a qualified advisor about the impact of divorce and remarriage on any existing estate-planning arrangements at an early stage, to ensure all angles have been considered. ■

STEP is the global professional association for practitioners who specialise in inheritance & succession planning. **www.step.org.**

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Sharon Giles
Partner
Divorce & family law

Sharon is head of our family law team. She specialise in complex financial matters often involving business interests, significant pension resources and/or properties and investments owned abroad.

Backing Gloucestershire's lifestyle businesses

Returning as headline sponsor to SoGlos' flagship event – the Gloucestershire Lifestyle Awards – is a perfect way for us to support and recognise the valuable contribution that lifestyle businesses make to Gloucestershire, the economy and society as a whole.

Last year's awards saw over 2,400 viewers tune in to the uplifting virtual awards ceremony on Facebook Live, with category winners including Gloucestershire landmark names such as Gloucester Cathedral, Adam Henson's Cotswold Farm Park, Everyman Theatre and Cheltenham Racecourse. Over 505 businesses nominated, 215 were shortlisted and more than 38,000 public votes were cast!

This year, nominations will open in March and run through to May, over which period businesses in the county can nominate themselves across 17 different categories. The voting phase will run from July to September, during which time the SoGlos readers will be able to vote for their favourite businesses. The awards ceremony is planned for late October 2021 at Cheltenham Ladies' College.

To find out more about the awards, visit **soglos.com/awards-lifestyle**. Follow the hashtag #SGGLA for updates. ■

Residential possession claim delays: an end in sight?

Private residential landlords have faced a tough couple of years with changes to the tax regime, increasing obligations, issues with recovery of unpaid rent and recently the outright ban on possession proceedings.

Considering that for many people their residential buy-to-let properties provide much-needed ancillary income, their primary income or a large proportion of their investment for retirement, these ongoing difficulties have placed huge pressures on landlords. Further to this, the recent eviction ban has cost landlords money, put tenants in further debt and delayed the inevitable repossession of properties.

That said, it appears that the government is acknowledging that they can delay no further. The recent update to the coronavirus regulations (Coronavirus Act 2020) finally allows for the most serious cases to proceed to repossession. Whilst this is only a partial solution to the ongoing ban, it now means that landlords facing the most serious issues, or rent arrears in excess of six months, can proceed with their claim through the courts and then by bailiff action if required.

There is a lot still to do. The new regulations around section 21 notices, notice periods generally and the overall complication of possession proceedings continues to make the residential lettings market more and more troublesome for private landlords. However, we are confident that, with the right support and advice, landlords can finally move to resolve issues they have with their tenants and get back to receiving their much-needed rent.

If you are facing issues with your tenants or have concerns, please get in touch. We know issues with tenants can be daunting, but we are here to help. ■

James Melvin-Bath
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James Melvin-Bath
Solicitor-advocate

Litigation & dispute resolution

A solicitor-advocate in our Legal 500-rated dispute resolution team, James helps private and commercial clients to resolve disputes.

Continuing support for local causes through a tough time

Left to right: Willans' staff volunteering at the shelter's sensory garden, and shoeboxes ready for dispatch

Each year, the staff at Willans nominate a local charity for the firm to support through a range of fundraising activities.

Despite the restrictions and difficulties that COVID-19 has brought about over the last 12 months, our staff have been creative with their fundraising for our current charity of the year, Gloucestershire Animal Welfare Association and Cheltenham Animal Shelter.

In September last year, several staff members from Willans visited Cheltenham Animal Shelter for the day, assisting the Shelter with sprucing up their sensory garden (in a socially distanced manner). This was the first of what we hope will be a series of work parties assisting the shelter throughout the year with various jobs that they have been unable to dedicate the time and resources to as a result of the pandemic.

Throughout November, our staff collected and donated 26 shoeboxes packed to the brim with treats and practical items for the furry residents of the Cheltenham Animal Shelter, with these being delivered to the shelter for Christmas!

Willans' charity committee have also managed to find ways to continue their fundraising efforts, by holding Willans' very first virtual "Pets Got Talent" competition in December. Following a fantastic array of entries from the pets of Willans' staff, ranging from dancing dogs to escape artist hamsters, we raised over £200 in donations for the charity.

Our wills, trusts and probate team will be donating their time and expertise once again, in hosting a will writing week for the Shelter; further details will be announced in due course.

Keep an eye on our social media channels for details of more charitable initiatives in the pipeline this year. ■

Laura Stone
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Laura Stone
Associate, solicitor

Wills, trusts & probate

Laura's work involves the preparation of wills, lasting powers of attorney, inheritance tax planning, estate administration, and Court of Protection matters.

Land Registry's proposed Safe Harbour scheme

Proposals from the Land Registry are set to be welcomed by conveyancers, as it offers reassurance for digital ID checks. Conveyancer **Héloïse Brittain** explains more.

Some aspects of the conveyancing process can seem archaic, but the Land Registry has suggested a way to revolutionise one aspect – identity checks.

Prior to COVID-19, we routinely invited clients into the office at the outset of the transaction to provide their IDs. More recently, we have had to find digital solutions.

The Land Registry has run a consultation as there is widespread demand for better and safer ID checks. The consultation ended on 11 December 2020. It is hoped that, if rolled out, the changes could be in place this year. The Land Registry has proposed a series of requirements which, when met, places the conveyancer in the Land Registry's Safe Harbour (the "Safe Harbour Standard").

Currently, if a fraudulent transaction is carried out, the Land Registry may compensate the person who suffered a loss (i.e. a homeowner who had their property fraudulently sold by someone else). The Land Registry can then recoup, in certain circumstances, the loss from the conveyancer.

A conveyancer who has therefore carried out their ID checks but has been duped by an expert fraudster is at risk of having to pay huge sums in compensation. However, under the proposed changes, once the conveyancer has satisfied the Land Registry's new requirements, they are in the Safe Harbour – this means the Land Registry would not pursue any claim against the conveyancer on the ground the identity checks were inadequate.

The checks are three requirements for all transactions and an additional fourth for when the conveyancer is representing a transferor, lessor or borrower (generally a sale or remortgage):

1. Obtain evidence. The evidence must include an item which can be checked by interrogating cryptographic security features within that evidence.

2. Check the evidence. It must be genuine which can be checked by using an identity check provider to verify the documentary and cryptographic security features.

3. Match the evidence to the identity. It must match the person presenting the document and an identity check provider needs to carry out a "liveness check".

4. Obtain evidence to ensure the client is the same as the owner. You must connect the client to the property.

Subject to meeting the above, the conveyancer can be confident they have carried out the required due diligence and are safe from being pursued for compensation by the Land Registry for identity fraud.

This gesture from the Land Registry shows a level of confidence in their digital ID checks. Arguably, the Land Registry is pushing to become more digital. Recently, the Land Registry amended their requirements to accept some digital signatures too. In this unprecedented time, the Safe Harbour adds a level of protection from fraudsters and the Land Registry's moves towards further digitalisation allow for further flexibility.

It's worth noting the Safe Harbour is not compulsory (nor will all legitimate clients have the required documents to allow their conveyancer to use it). It does, however, offer a benefit to those who adopt it and helps push conveyancing into a digital era, should it be implemented. ■

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Héloïse Brittain
Conveyancer
Residential property

Héloïse deals with a wide range of property matters, particularly in relation to sales and purchases. The varied range of clients she works with include businesses and individuals, both locally and nationally.

Trusts in wills: A good way to ring-fence your assets for beneficiaries

Including a trust in a will can be an excellent way to ensure certain assets go to the people you want them to, explains private client executive **Siân Devereux-Renny.**

Siân Devereux-Renny
Private client executive
Wills, trusts & probate

Siân mainly assists clients with the administration of estates, preparation of wills, inheritance tax planning and lasting powers of attorney.

An oft-quoted statement we hear is "I only need a simple will". Upon further discussions with clients, it may transpire that they have been married more than once or have a child or children from different relationships.

A recent article in *The Times Money* reported on two children who had 'lost out' on their inheritance of £300,000 following their father's death. This occurred because their father had left everything in his will outright to his wife (his children's stepmother). Subsequently, the surviving wife changed her will to leave her entire estate (which included her husband's assets) to her own children. Ultimately, the two children were left with no inheritance from their father's estate.

To prevent this scenario, there are ways of structuring your will. One way to ring-fence assets for beneficiaries is to include a trust in your will. There are different types of trust that can be included in your will, but the most common type is referred to as a Life Interest Trust.

A Life Interest Trust can be established in your will to provide your chosen beneficiaries with the right to receive income from the trust. Such a right is usually given for the beneficiary's lifetime. It often involves the right to reside in a property for a defined period, but can also include any number of savings and/or investments held by you which form part of your estate.

When the 'life tenant' (i.e. the beneficiary of the trust) passes away, the trust fund is usually left to the other named beneficiaries in the will trust, often referred to as the 'residuary beneficiaries'.

"...the two children were left with no inheritance from their father's estate..."

The life tenant is not entitled to any capital unless this right is expressly given in the will trust.

Where a property is held in the trust, the life tenant will be entitled to the rental income produced from it or, more usually, they will live in the property if they wish to do so.

It is often the case that a 'flexible' Life Interest Trust is recommended whereby the trustees have the power to override the Life Interest Trust for the benefit of a class of chosen beneficiaries. This provides maximum flexibility for the appointed trustees.

Reasons for including a trust in your will are not just limited to those in second marriages or with children from previous relationships. For example:

- You may be concerned about your spouse remarrying after your death.
- You may wish to provide for your spouse after your death, but you would like them to continue living in the 'matrimonial home' during their lifetime whilst protecting your interest in the home for your own children.
- You may have concerns about care fees. If your estate is held on trust, it may be disregarded in terms of the assessment for care home fees and funding.

A consideration for business owners is that they may wish to keep the family business within the family rather than for this to be diluted to non-family members. Business interests such as shares, can be held on trust to protect such assets.

As the life tenant under the will is only entitled to income from the trust or to reside in the property (if applicable) for their lifetime, the remainder of the trust fund will be utilised for the benefit of your chosen residuary beneficiaries i.e. your children. Therefore, including a trust in your will when it is drafted can provide a solution to ensure your assets end up with the correct beneficiaries. ■

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Jessica Whooley
Solicitor
Litigation & dispute resolution

A solicitor in our Legal 500-rated dispute resolution & litigation team, Jessica is experienced in assisting individuals, both claimants and defendants, on a wide range of disputes, with a specialism in inheritance and trust disputes.

The Inheritance Act (1975): What is it, and can you make a claim?

The Inheritance (Provision for Family & Dependents) Act 1975 can be a lifeline for those who have been overlooked when it comes to inheritance. **Jessica Whooley** looks at what the law says.

Unlike some jurisdictions, under the law of England and Wales, a testator has complete autonomy to decide who is to inherit from their estate.

A testator could therefore choose to exclude a child or someone else where the relationship has broken down. They may choose not to leave any of their assets to their family members at all, instead leaving their entire estate to a third party or charity.

Whilst a will in such terms is permitted, it may be the case that a testator has overlooked the needs of a particular individual who would ordinarily expect to benefit, or a will was drawn up before that person came into the testator's life. Alternatively, it may simply be the case that the deceased failed to prepare a will at all. In that case, the rules of intestacy would apply; these are rigid and do not account for the complex nature of relationships. Unfortunately, a cohabitee of the deceased, who was not their spouse, would have no right to benefit no matter how long the couple had lived together.

The consequences of this can be severe; individuals may face the prospect of losing their home, or stop receiving financial help which would ordinarily have been provided by the deceased.

In such circumstances, those not adequately provided for can consider bringing a claim under the Inheritance Act. Only certain persons are entitled to make a claim, which includes a spouse or civil partner; former spouse or civil partner; a cohabitee; a child of the deceased (minor and adult); a person who was treated by the deceased as a child of the family, and a person being maintained by the deceased.

Some claimants may be easy to identify, such as a spouse or child, but it is not always straightforward. For example, for a cohabitee to benefit they must have been living as if married to the deceased in the same household for the two years immediately prior to death. There may be difficulties determining exactly when the couple started to live together, especially in cases where there are second homes. To prove they are an eligible claimant, a cohabitee may need to provide bank statements, utility bills and other evidence to establish the relationship. Any absence by either the claimant or the deceased in the two years prior to death will need to be critically examined to ascertain whether or not this was due to a relationship break-down or perhaps due to circumstances, such as the need to travel for work.

Second marriages are now commonplace and this has resulted in a rise of claims by step-children. Often a spouse will leave everything to the surviving partner, meaning their children do not benefit in the first instance. It may be incorrectly presumed all children from both parties' previous relationships with benefit. The first spouse to die may leave a substantial estate but the second spouse leaves everything to only their own children. Where a person believes they were treated as a child of the family, for example a step-child, a forensic analysis is required to understand the relationship between the parties.

Where a person is not an eligible claimant under any of the other categories, they may be able to claim as a person being maintained by the deceased. This could include a person in a relationship with the deceased who is not considered a cohabitee, a former spouse who has remarried, or maybe just a friend. Anyone making a claim under this category will need to show that the deceased was making a contribution to their expenses. This is likely to require evidence by way of bank statements or proof that other substantial gifts were being regularly made by the deceased.

Determining whether an individual can bring a claim under the Inheritance Act can be tricky. If you have been excluded from an estate which you would expect to benefit from, please get in touch. ■

Jessica Whooley
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Biden's proposed personal tax plan explained

If you are a US citizen, are married to one or have another US connection, now may be an opportune time to review your estate planning, explains senior associate **Hannah Wall.**

Democrats will now control the House and Senate for at least the next two years and, as a result, President Biden will likely be able to bring more of his tax agenda to fruition.

Unlike some of his opponents in the Democratic primaries, Biden has not pushed for a "wealth tax" but he is nonetheless focused on taxing the wealthy more heavily.

His plans include raising the highest personal income tax rate from 37%, under Trump's 2017 Pre-Tax Cuts and Jobs Act, to 39.6%, increasing capital gains tax rates from 20% to normal rates, eliminating the step-up in basis for inherited capital assets, increasing the top rate of estate tax to 45 percent and reducing the lifetime gifts and estate tax exemption from $11.7m to $3.5m per person.

US citizen individuals are subject to estate tax on all transfers of property from one person to another on death. The current rate of estate tax is 40% (identical to the UK inheritance tax rate).

Transfers from one US citizen spouse to another US citizen spouse are exempt from estate tax. However, there is no spousal exemption for assets left by a US citizen spouse to a non-US citizen spouse and this can result in a substantial estate tax liability if proper planning is not implemented (the same principle applies under UK inheritance tax law where there is a "mixed domicile" couple).

To date the lifetime gifts and estate tax exemption of $11.7m was often sufficient to eliminate any concern over an estate tax liability but the proposed reduction of this exemption to $3.5m means that many more estates will fall within its scope.

Biden is unlikely to achieve everything he wants because the Democratic majorities in Congress are razor thin and amending tax legislation is going to take some time, not least as a result of the pandemic. That said, if you are a US person, are married to one or have any other connection to the US, you may want to review your estate planning in advance of President Biden's plans making it through Congress, including maximising the unified tax credit and making use of lifetime and will trusts.

> "...you may want to review your estate planning...including maximising the unified tax credit and making use of lifetime and will trusts."

We advise UK connected clients on UK and US estate planning, both in isolation and in collaboration with US attorneys and accountants.

If you would like advice on your position, please get in touch. ■

Hannah Wall
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Hannah Wall
Senior associate, solicitor

Wills, trusts & probate

Hannah is a dual UK/US citizen and advises UK and non-UK resident clients on matters including tax and succession planning, wills, trusts and lasting powers of attorney.

She is also experienced in advising on the administration of estates, frequently with a cross-border element such as non-UK assets or a foreign domicile issue.

Read more & get the latest legal updates at **willans.co.uk/insight/**

The rules around income tax - what executors should know

Miranda Hawkes
Associate, chartered legal executive
Wills, trusts & probate

Miranda is a full member of the Society of Trust & Estate Practitioners, and a member of Solicitors for the Elderly. She is experienced in supporting many clients who are elderly and vulnerable, particularly those who are unable to make important decisions for themselves.

Income tax is something we think about regularly during our lifetime. We constantly ask questions such as "have we paid enough?" and "does HMRC owe us a refund?", yet the topic is often forgotten about after someone has died.

An executor, as part of their role in administering an estate, is required to finalise the income tax position of the person who has passed away. Bank account interest, share dividends, trust income and pensions are just a few of many sources of income that may need to be reported to HMRC after some has died. In all cases, bank interest is now paid gross and so there will always be some income to declare to HMRC as a result of a person's death.

The executor is required to report to HMRC the income tax position in the tax year that the person died up to the date of that person's death and for the estate administration period which, depending on the complexity of the estate, may span across more than one tax year. The executor is also required to report any capital gains or losses during the administration of the estate.

Depending upon the complexity of the estate, the executor may be able to report to HMRC using their informal method. However, if any of the following apply, the executors will be required to complete a full tax return on behalf of the estate:

- If the estate has generated income tax and capital gains tax due in excess of £10,000 during the administration period;
- The estate was worth more than £2,500,000 at the date of death;
- The estate realised assets worth more than £500,000 in the tax year in question.

HMRC require the executors to register the estate online to obtain a Unique Taxpayer Reference before then submitting the tax return either online or by post.

Seeking help from a legal professional will give you peace of mind that; you will know that you have dealt with all aspects of the estate correctly to avoid any recourse to the executors after the estate has been distributed to the beneficiaries. If you would like any advice on the tax implications of a person's estate or indeed any other aspect of an estate, please do not hesitate to get in touch. ■

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Contact

For advice on any of the issues covered in *Your Life & the Law* or any other area of law, these are the people to contact in the first instance.

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