

Your life & the law

Newsletter for private clients

willans

Willans LLP | solicitors

Spring / Summer 2023

Receive the latest news and regular updates | Visit willans.co.uk/subscribe



Welcome to the spring/summer issue of *Your Life & the Law*.

In this issue, you'll find thoughts from our expert team of private client lawyers on the latest updates and topics in their areas of wills, trusts & probate, disputes, residential property and family law.

As always, if you need any help with legal matters in your life, please get in touch with our teams.

Bridget Redmond managing partner

A warm welcome to our latest arrivals

Since the previous issue of *Your Life & the Law* hit the press at the tail-end of last year, our private client departments have welcomed a number of new faces.

The arrival of solicitor Joeli Boxall has contributed to the expansion of the family law team. She helps clients at various stages of their relationship, including on matters relating to divorce, financial remedy, arrangements for children, domestic abuse and nuptial agreements.

Solicitor Jordan Evans also joined the firm – a new addition to the highly regarded litigation & dispute resolution team. Primarily working on

property disputes, Jordan is well equipped to find clients practical solutions to their problems.

Our wills, trusts & probate department grew too following the arrival of solicitor Nicole Boon. A graduate of Cardiff University, Nicole helps people with drafting wills, estate administration, trusts, lasting powers of attorney and deputyships.

All of our lawyers can be found on our website, which you can visit by [clicking here](#) or by following the link below:

willans.co.uk/people/ ■



Joeli Boxall | Family law



Jordan Evans | Litigation & dispute resolution



Nicole Boon | Wills, trusts & probate

What's in this issue?

- Updates to property protocol forms
- Modernising the LPA process
- Upcoming housing changes
- Q&A: No fault divorce
- Capacity corner

Review us online!

Have you had a positive experience working with us? If so, please consider leaving us a review online at [ReviewSolicitors](https://ReviewSolicitors.com).



Property protocol forms updated to reflect building safety legislation



The Law Society protocol forms provide guidance in respect of sale and purchase transactions, designed to assist with making the conveyancing process transparent and effective.

Recently, key property protocol forms were updated to reflect changes to building safety legislation introduced by the Building Safety Act 2022. The act – implemented following the Grenfell Tower disaster – concentrates on the safety and standards of all buildings, assuring the safety of higher risk buildings and improving the competence of the people responsible for managing and delivering work involving them.

The leasehold property enquiries form (LPE1) is used to collect information held by landlords and managing agents, including ground rent, service charge and insurance. The revised form features additional questions to find out whether:

- there is any outstanding enforcement action against the landlord or accountable persons
- the leaseholder deed of certificate has been served on the landlord in relation to the sale of the property
- remedial works required to the property.

The leasehold information form (TA7) completed by the seller also includes a section on building safety. It asks important questions surrounding remediation work and whether the seller is aware of any defects to the property that create a safety risk.

From 14 February 2023, only the updated versions of the LPE1 and TA7 should be used.

Law Society of England and Wales president, Lubna Shuja, said: “The forms have been amended as part of an effort to ensure those who want to buy or re-mortgage flats affected by building safety issues can access mortgage finance.”

The changes made by the Law Society intend to improve efficiency and precision in the conveyancing process, and the additional questions aim to ensure conveyancers receive the necessary information to advise prospective borrowers and lenders on the current position relating to building remediation responsibilities.

It is a proactive step in the right direction to ensure protocol forms are fit for purpose and reflect current legislation and building standards.

If you’re looking to buy or sell a property and have any questions about the latest form updates, be sure to contact our expert team of advisers. We’d be more than happy to help. ■

Suzanne O’Riordan
suzanne.oriordan@willans.co.uk

Eliza Senior Fellows
eliza.senior-fellows@willans.co.uk



Suzanne O’Riordan
Partner, conveyancer
(non-solicitor)

Residential property

Suzanne leads our highly rated residential property team. She is experienced in her field, helping first-time buyers through to buy-to-let investors with a range of property



Eliza Senior-Fellows
Trainee solicitor

Residential property

Eliza is a trainee solicitor in our residential property team. She deals with freehold sales and purchases from initial client instruction through to exchange and completion.

Hold your horses: The dangers of a grazing licence gone wrong



What is a grazing licence?

An agreement that allows a grazier access to a landowner's land to graze their animals. It is essentially a short-term agreement to sell the grass that is growing, which does not grant any exclusive rights over the land and carries no rights of renewal.

If not in writing or drafted carefully, a grazing agreement may inadvertently create a tenancy rather than a licence, giving the grazier far greater rights than the parties intended.

A tenancy may also be created if a grazier is allowed to remain in occupation after the fixed licence period of a grazing licence expires.

What are the dangers of a tenancy?

Termination: A tenancy is more difficult to terminate than a grazing licence, often requiring service of up to two years' notice to recover possession. This can create problems when landowners want to sell or develop their land.

Security of tenure: Where the land is occupied by a business – or for non-agricultural purposes – a tenant will have an automatic right of renewal at the end of the term unless the appropriate notices were served prior to occupation. Particular care must be taken where land is grazed by horses – any tenancy created will likely be construed as a business lease.

Basic payment scheme: A landowner will only be able to claim these payments (including the delinked and lump sum

payments) under a grazing licence. Only the party occupying the land that is entitled to claim and a tenancy grants the tenant exclusive rights of occupation.

Tax: Both tenancies and grazing licences have a role to play in tax planning. Both can potentially assist in claiming Inheritance Tax reliefs, but under a grazing licence the landowner remains in occupation, which can also assist in claims for roll-over or business asset disposal relief from capital gains tax. Which structure is used will also affect the income tax and VAT position.

In short, the implications for a landowner of entering into a grazing agreement can be complex and far-reaching, and specialist advice should be sought to ensure opportunities are maximised and headaches are avoided.

Our agriculture & estates team would happily discuss things with you. Please get in touch. ■

Adam Hale

adam.hale@willans.co.uk

Sophie Oakes

sophie.oakes@willans.co.uk



Adam Hale

Partner

Agriculture & estates

Adam's varied client base includes rural businesses and private landowners. He advises on issues affecting landowning clients, ranging from rural land management to transactional work, with a particular focus on the disposal of development land.



Sophie Oakes

Paralegal

Agriculture & estates

Sophie assists the team with helping clients, including landowners, rural businesses and those in the development sector, on a wide range of matters.



Be careful being overly litigious or your copyright could be 'gone in 60 seconds'

In the car world, reproduction cars are a huge thing. Whether it's recreating *Herbie* from a ropey VW beetle or making your Pontiac Firebird befriend *Michael Knight*, fans have been making reproductions of famous film and TV cars for years.

Most of the time, studios and the relevant owners of the intellectual property (IP) relating to films and TV programmes take the view that reproduction cars made for personal use are:

- fair use being made for personal non-commercial use
- and good free publicity for their IP.

They therefore typically leave fans alone, or – in some cases – even get them involved in ongoing events and publicity.

However, this was not the case with *Eleanor* from the film, '*Gone in 60 Seconds*'.

First appearing on the big screen in 1974, *Eleanor* the star car was a 1971 Ford Mustang.

H.B. Halicki was the director, and so the intellectual property of the film belonged to him. When he sadly passed away filming the sequel, his wife, Denice Halicki, acquired the IP after a significant legal battle with her late husband's family.

Denice then agreed a deal for the remake of *Gone in 60 Seconds* – starring Nicholas Cage and Angelina Jolie – where, eventually, a 1967 Ford Mustang was used. This would turn out to be significant.

The revamped take was a huge success and created a large following in the customised car world following its release in 2000. Various parties – including the famous tuning house, Shelby – made reproductions of the new star car, but this is where the story takes a turn.

Denice Halicki started multiple claims against numerous parties making reproduction cars, including Shelby.

Multiple fan projects were shut down, including one on YouTube that was seized and disposed of.

Denice argued that the Mustang – *Eleanor* – was a distinct character like *Mickey Mouse* and, as such, had the same protections and could not be reproduced without consent.

Had Denice continued her flurry of litigation against small fan projects, she may have been successful. Nevertheless, this was not the case as Shelby took offence to her approach and challenged her.

The US District Court for the Central District of California took the view that *Eleanor* was not deserving of character protection, with one of the strongest arguments being that the cars from the original film and the remake were different models and almost entirely different to look at.

So, what's the moral of this story? Fans are a huge part of TV and film. Car film franchises have large followings in the modified car scene, and it's those fans who keep the films alive by rewatching and purchasing merchandise for years that follow.

If you decide to go full *Christine* perusing legal action against your fans, expect some kick back, or worse – a legal fee bill that requires *The Italian Job* to pay off.

If you're working on a passion project, our specialist team want to hear from you!

Passionate about all things automotive, we deal with legal services for car enthusiasts, dealer groups and manufacturers. Get in touch, even if it is just to discuss your project or one of the events we will be at. ■

James Melvin-Bath

james.melvin-bath@willans.co.uk



James Melvin-Bath

Associate, solicitor-advocate

Litigation & dispute resolution

James helps clients ranging from individuals to large limited companies, with a range of dispute resolution queries.



Follow us on Instagram!
@willanscarlawyers



Bethen Abraham

Trainee solicitor

Litigation & dispute resolution

Bethen helps clients with residential possession issues, building disputes and disputes involving vehicles, but also works on other contract-based claims.

Do you have property in Wales?

On 1 December 2022, the Renting Homes (Wales) Act 2016 came into force. All social and private landlords will need to understand what's changed and what will be expected of them in the near future. For our full article, [visit our website](#) or follow this link:

willans.co.uk/knowledge/renting-homes-act/ ■



Q&A: Taking a look at no-fault divorce



The no-fault divorce provisions have been in place for nearly a year, but for separating couples this simplified process can still feel unfamiliar and daunting.

We answer some common questions about the new law, which also applies to civil partnerships.

What is no-fault divorce?

No-fault divorce refers to the provisions introduced in April 2022 to replace the somewhat archaic previous divorce laws.

Historically, a person wanting a divorce had to lay blame at their spouse's door for the marriage having broken down. To avoid this, the couple had to be separated for at least two years before applying for the marriage to be dissolved.

The new law simplifies the process and removes the need for couples to justify why a divorce is required.

Does this make it easier to get a divorce?

The previous law did not prevent couples from getting divorced but they had to delay the process for at least two years if they wished to petition on non-contentious grounds – an option many separating couples prefer.

The new law does not make it more likely for a couple to get a divorce, nor does it encourage divorces. What it does allow for is a much simpler and more amicable way of navigating the process.

These changes aim to keep tensions down and take unnecessary conflict out of what is already a difficult and emotional decision.

How does it work?

One or both parties may make a divorce application by confirming that the marriage has irretrievably broken down.

Once the court has processed the application, the parties must wait 20 weeks before progressing to the next stage. This delay is intended as a period of reflection and to allow couples an opportunity to resolve their finances and any child arrangements.

After 20 weeks, the parties can apply for a conditional order (previously 'decree nisi').

Six weeks after the conditional order date, the couple may apply for a final order (previously 'decree absolute'). The change of language ties in with the primary intention of modernising this process.

What about our finances?

It is a common misconception that obtaining a divorce will automatically address and settle the matrimonial finances. These must be handled separately and a further court order, known as a financial remedy order, is needed. These orders can be negotiated out or, if voluntary talks break down, ultimately decided by the family court via a designated court process.

Why do I need a solicitor?

Although the divorce process has been made simpler, it is still important to receive specialist legal advice about your situation.

The most difficult and often most complicated part of any divorce is deciding how to unravel and share out the family finances and – where applicable – share the care of any children. The no-fault divorce process does not assist with either of those issues.

A specialist family law solicitor can help you understand your legal rights and assist with addressing the wider discussions that a divorce application triggers.

If you have any questions on no-fault divorce or are looking for guidance from an expert, please do not hesitate to contact us – our friendly and highly rated team can help. ■

Joeli Boxall

joeli.boxall@willans.co.uk



Joeli Boxall

Solicitor

Family law

Joeli advises clients at various stages of their relationships, ranging from divorce, financial remedy, arrangements for children and nuptial agreements.



Free to download

What is an LPA? How do I set up and use one? Are they new?

Our free legal guide answers these questions for you and more.

View it here or visit:

willans.co.uk/document/lasting-powers-of-attorney-lpas/ ■

Lasting powers of attorney: The modern process

Many people today understand the benefit of having a lasting power of attorney (LPA), whereby someone nominates an individual to be their attorney in respect of their health and welfare or property and financial affairs.

All LPAs must be registered with the Office of the Public Guardian (OPG) before they can be used. In recent years, the number of registrations have increased significantly, with over six million having gone through the requirements.

However, many have criticised the process of making an LPA and a government consultation to obtain views on how to modernise it was launched in 2021. The current paper-based system has not kept pace with changes in technology and is sure to be putting further strain on the time it takes to register – something that currently takes in excess of 20 weeks.

Under the new government proposals, people will be able to make an LPA entirely online, however the paper-based system will also continue to give flexibility as to how people wish to prepare.

A concern that many share is that an online system will increase the possibility of fraud and misuse. The proposals are set to include safeguards for online applications and the applicant – known as the donor – will need to produce their passport, driving licence or Government Gateway account in order to verify their ID. Nevertheless, the only way to ensure an LPA is being prepared correctly is to seek legal advice.

Whilst any new system introduced by the government is never without issues, it is hoped that the reforms will increase safeguarding checks, improve the process of making an LPA – hopefully to include speeding up the process of registration – and to also achieve sustainability and affordability for the OPG in line with other government departments.

If you want to make sure an LPA is being correctly prepared for you or someone you know, why not get in touch with our legal experts? Our approachable and friendly team is waiting to help you. ■

Siân Devereux-Renny

sian.devereux-renny@willans.co.uk



Siân Devereux-Renny

Private client executive

Wills, trusts & probate

A lawyer in our *Legal 500*-rated wills, trusts & probate team, Siân supports clients with the administration of estates, preparation of wills, inheritance tax planning and lasting powers of attorney.

Rich & famous: Disputing the inheritance

In 2011, music star Amy Winehouse died at the age of 27 without a valid will. As a result, her estate was to be distributed under the rules of intestacy.

A divorced woman at the time of her death, it was up to the closest surviving relatives to apply for probate. Believed to be in the region of £3 million, her wealth was passed to her parents.

Eight years on, however, it is understood Winehouse's ex-husband – Blake Civil-Fielder – made a claim against her estate. The basis of the claim was that he had been married to the singer and sought a sizeable lump sum payment, as well as a monthly allowance.

As the ex-spouse of the deceased, he was able to make this claim despite their earlier divorce. The Inheritance (Provision for Family & Dependents) Act 1975 allows for claims by former spouses, provided they had not remarried.

Civil-Fielder would not have been permitted to pursue, though, in the event he and Winehouse had a financial order following their divorce stating that neither could make a claim against the other's estate. The only exception to this rule would have been if she had continued to financially support him

following their split. In those circumstances, he may have been an eligible claimant as he was supported by the deceased for two years immediately prior to her death.

However, another issue was time - the limit to make a claim under the Inheritance Act had passed. The law states that – for a claim of this nature – it must be issued with the courts within 6 months from the grant of representation being issued. Making a claim outside of this time would mean that Civil-Fielder would need permission from the court to do so. The court would consider all relevant factors when deciding – including, in this case, the fact that Winehouse's estate had already been distributed.

It is unknown whether this particular claim was successful, and this may therefore indicate some sort of settlement was reached between the parties.

If you have been excluded from an estate where you may have expected to benefit, then please do get in touch – one of our lawyers will be able to discuss your options with you. ■

Jessica Whooley

jessica.whooley@willans.co.uk



Jessica Whooley

Associate, solicitor

Inheritance & trusts disputes

Jessica has experience advising people on a wide range of disputes, with a specialism in inheritance and trusts.

In the next few issues, 'capacity corner' will provide an insight into the subject of capacity and its potential impact on our lives and those of our loved ones.

Capacity corner

What is 'mental capacity' and how can I protect myself?

Did you know?

- 1 in 3 over 65 will get dementia (Alzheimer's Society)
- Someone in the UK is admitted to hospital with an acquired brain injury every 90 seconds (Headway)

Although it's not a subject anybody likes to talk or think about, there is a significant chance the loss of mental capacity will affect you or someone you know at some point.

What is mental capacity?

Mental capacity is having the ability to make your own decisions. Each decision is relevant to the question being asked, so you may have capacity to make one decision but not another. Someone with capacity must be able to:

- understand the information relating to that specific decision
- retain that information so that they can make a decision
- weigh up the relevant information
- communicate that decision in whatever way possible. For example, the assistance to the person in question must be given in a way that they understand – this could be by way of pictures, scenarios, specific limited questions, sign language etc.

It's also possible that capacity can fluctuate depending on the time of day.

In the eyes of the law, a person must always be presumed to have capacity until it is proved otherwise.

The rules in relation to mental capacity are governed by the Mental Capacity Act 2005. There are five principles – one of which is that, where possible, the person in question must be assisted to make their own decisions. This would be relevant where someone has fluctuating capacity or simply struggles to understand what is being asked.

Who can assess mental capacity? How should you protect yourself should you lose mental capacity?

Lack of capacity is normally assessed by a suitably qualified professional, such as a psychiatrist or a social worker.

The best way to protect yourself is to make lasting powers of attorney. There are two – one deals with your health and welfare, the other your property and financial affairs. These are documents that allow you to appoint someone or multiple people to take care of your affairs and act on your behalf

should you no longer be able to. It is also worth remembering that you can lose capacity temporarily or permanently.

You have the option to decide with the property and financial affairs LPA when and how your appointed attorney/s should act. These can deal with your personal finances, or you can make an LPA to deal with your business.

A health and welfare LPA cannot be used until you have lost mental capacity. This is because if a decision needs to be made about where you live, who you see or what treatment you need, for example, then the only person who should be making that decision is you whilst you still can.

Both LPAs must be registered by the Office of the Public Guardian before they can be used – a process currently under modernisation, as explained on the previous page. We would always recommend that LPAs are registered at the point they are made.

You may have already made an enduring power of attorney prior to the end of 2007. This is only for financial and property decisions, not health and welfare ones as they were introduced with the creation of the Mental Capacity Act 2005. Whereas the LPAs can sit waiting to be used once registered, an EPA cannot be registered until you are losing or have lost mental capacity. At that point, your attorney/s have a duty to register the EPA.

Registration of both EPAs and LPAs are currently taking a minimum of five months. An EPA may be eligible for use prior to registration or it may have restrictions that stop an attorney acting until it is registered.

In the next issue of Your Life & the Law due in autumn, I will be discussing what happens if you lose capacity without having made an EPA or LPA.

If you have any other questions regarding the topics discussed above, please do not hesitate to contact me. Whether it's for you or somebody you know, I am happy to help. ■

Janine Guthrie

janine.guthrie@willans.co.uk

Page 7



Janine Guthrie
Associate, chartered legal executive

An accredited member of Solicitors for the Elderly with almost 10 years' experience, Janine helps clients who are planning for when they might lose capacity and the families and friends of those who have already reached that point.

Can a killer benefit from their victim’s estate?



If someone is convicted of unlawfully killing another person, it cannot be right that they should then be allowed to benefit from their victim’s estate as a result of their crime. This principle is upheld in law and is known as the ‘forfeiture rule’.

The forfeiture rule is one of public policy to act as a deterrent to would-be murderers to ensure that they will not financially benefit from their crime (if prison is not enough). For example, if a son murders his mother – and is a beneficiary of his mother’s estate – then he would forfeit any inheritance he had previously been entitled to.

However, the court has the discretion to modify the rule but only if it is satisfied the justice of the case requires it. All the circumstances of the individual case must be considered so that the court can decide whether it would be unfair or unjust to deprive the perpetrator of a benefit from the estate.

There is a time limit in which someone can make a claim to modify or exclude the rule, and that is three months from the date of conviction.

Whilst cases of this nature are relatively uncommon, if you would like to discuss the forfeiture rule or any other inheritance or trustee dispute, please do get in touch with our expert team. ■

Evie Claridge
evie.claridge@willans.co.uk



Evie Claridge
Trainee solicitor

Litigation & dispute resolution

Evie advises on a range of disputes, including those relating to inheritance & trusts as part of our *Legal 500*-rated team.

For more expert insight from our highly rated team of lawyers, please view our website. Visit willans.co.uk/insight/ for the latest legal updates that could be affecting you or your family. ■

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.

Corporate & commercial

Chris Wills chris.wills@willans.co.uk
Rishi Ladwa rishi.ladwa@willans.co.uk

Real estate & construction

Alasdair Garbutt alasdair.garbutt@willans.co.uk
Nigel Whittaker nigel.whittaker@willans.co.uk

Employment law & business immigration

Matthew Clayton matthew.clayton@willans.co.uk
Jenny Hawrot jenny.hawrot@willans.co.uk

Residential property

Suzanne O’Riordan suzanne.oriordan@willans.co.uk
Simon Hodges simon.hodges@willans.co.uk

Litigation & dispute resolution/ property litigation

Paul Gordon paul.gordon@willans.co.uk
Nick Southwell nick.southwell@willans.co.uk

Divorce & family law

Sharon Giles sharon.giles@willans.co.uk
Jonathan Eager jonathan.eager@willans.co.uk

Rural business, agriculture & estates

Adam Hale adam.hale@willans.co.uk

Wills, trusts & probate

Simon Cook simon.cook@willans.co.uk

Charities & not-for-profit

Alasdair Garbutt alasdair.garbutt@willans.co.uk

To receive the latest news and regular updates, visit willans.co.uk/subscribe.



Willans LLP | solicitors
Cheltenham
Gloucestershire

01242 514000
law@willans.co.uk
www.willans.co.uk



Follow us @WillansLLP

