NEW YEAR 2014

MOSS SOLICITORS

NEW YEAR LEGAL REVIEW

Your legal bulletin on news & views from Moss Solicitors LLP

MOSS LEND A HELPING HAND WITH THEIR NEW "PAY AS YOU GO" FAMILY LAW SERVICE

Are you involved in a divorce, separation or a dispute regarding your children, but are worried about the cost of instructing a solicitor to act for you?

Do you feel that you could run your own case but would like to have a solicitor to ask for advice when things get complicated?

In today's difficult economic climate, together with the changes which came into effect on 1st April 2013 which have severely restricted the availability of legal aid for divorce and family cases, there will be an increasing number of people who wish to separate or divorce but who are worried about, or can't afford, large legal bills. Also, the prospect of dealing with divorce proceedings, a financial settlement or a dispute regarding their children completely on their own is very daunting.

Moss "Pay as You Go" Family Law Service is a scheme designed to help people to represent themselves, but which also provides advice and assistance to them as and when they require it.

Advice is given on a face to face basis and can include the drafting of complex letters, checking forms and considering the pros and cons of taking a particular course of action. Each meeting is paid for on the day, so that there are no big bills to pay at the end of the case. You do the rest of the work, keeping your paperwork organised and corresponding with the other party, their solicitor or the court, but with the peace of mind that there is someone who knows your case and can advise you if you need it. For example, if you receive a letter that worries you, make an appointment with us to discuss it. You control your own case, minimise your costs and only seek the advice that you need.

If at any time you feel that your case is getting too much for you under this scheme, you can always transfer to being represented by us under our regular terms of business.

Moss Solicitors Family Law department

If you consider that *Moss Pay as You Go Family Law Service* would suit you, or would like further information regarding matrimonial or family matters, please contact, *Rita Rathod r.rathod@moss-solicitors.co.uk or Ann Elliott a.elliott@moss-solicitors.co.uk or telephone 01509 217770.*

Moss Summer Art Spectacular
Tuesday 17 June 2014
Tickets: £15

Run in conjunction with Loughborough Town Hall and in support of local charity Rainbows, the evening event will be an opportunity for guests to network whilst enjoying the art exhibition in the Sock Gallery. There will also be the chance to win a piece of art generously donated by the artist John Connolly.
All profits and raffle proceeds to Rainbows.

To register your interest, please contact Laura Anderson l.anderson@moss-solicitors.co.uk

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MOSS SOLICITORS UPDATE

PLANNING RELAXATIONS TO HELP STRUGGLING TRADERS

Recent amendments to planning law allow smaller High Street business premises to be used for different types of business activity without having to go through complex applications for change of use. New permitted development rights also allow offices to be converted into residential accommodation.

Subject to notification procedures, buildings that are classed for use as retail, financial services, restaurants, pubs and hot food takeaways, offices, leisure and assembly uses can be changed temporarily to another use class. They can be used for retail, financial services, restaurants and cafés and offices for a single period of up to two years.

Small agricultural buildings are allowed to be used for a number of other business purposes with permission.

There are a number of other changes, designed to provide the 'vital flexibility to enable the quick responses necessary to support business growth'.

We can advise you on any property matter.

The Government has taken a small step to simplify one difficult area of company law by proposing an easier system for companies to undertake a 'purchase of own shares' (POS).

POS is a very useful way of buying out minority shareholders and employee shareholders who realise their shares when they leave the company. However, company law requires that when the POS is carried out, the company must have sufficient 'available profits' or that it is financed by a new issue of shares or capital. Also, a special resolution of the company must be passed. The cost and complexity of these requirements mean that companies often avoid the use of POS where possible.

Under the new rules, companies will be able to buy back small shareholdings (up to the smaller of £15,000 or 5% of the shares in issue) without first needing to check that distributable profits are sufficient to do so.

The means by which shareholders approve such transactions is also to be greatly simplified and the requirement that such shares are cancelled rather than being held 'in treasury' (which means being held by the company and available to be reissued) is being removed. The proposals will undoubtedly be altered before the relevant law is passed and the above is a simplified version of the planned changes.

If your company needs to buy out minority shareholders or you wish to repurchase the shares of a departing employee, contact us for advice.

COURT REJECTS EVIDENCE DELIVERED TOO LATE

A recent case illustrates the importance of making sure that all the evidence which it is intended to rely on in legal proceedings is put before the court and made available to the other side in good time for them to evaluate it and prepare their response.

The case concerned pipes which were to be used in the construction of a waste disposal plant. These were discovered to have been damaged.

They had been manufactured in Romania and shipped to the UK.

It was unclear whether they had been damaged in transit or on site in the UK and different insurers covered each possibility. When evidence was introduced at a very late stage in proceedings by one of the parties, the court refused to hear it, which resulted in an appeal.

The Court of Appeal gave the appeal short shrift, LJ Moses going so far as to comment, "I wish to underline the audacity, if not effrontery, with which the appellants have advanced this appeal." In its view, the finding of the lower court that the loss occurred in transit could not be criticised on the basis of the evidence available to the judge.

When conducting a legal dispute, it is important to collect and marshal your evidence promptly to ensure that your case can be argued as forcibly as possible.

We can ensure your case is presented to give the best chance of success.

CONVEYANCE RECTIFIED TO GIVE EFFECT TO MOTHER'S WISHES

A fundamental drafting error in a conveyance, which resulted in a son being given a beneficial interest in his elderly mother's home, contrary to her intentions, has been rectified by the Court of Appeal. Due to the error, the man had become sole legal and beneficial owner of the property by survivorship on his mother's death and his two brothers had effectively been disinherited.

The conveyance had recorded the mother's gift to her son 'in consideration of natural love and affection'. It had the effect of making mother and son beneficial joint owners of the property, whereas her intention had been to put the property in their joint names so that he could raise a loan using it as security. She had not wished to relinquish any part of her beneficial interest in the property.

When the matter first came to court, the judge refused to rectify the conveyance on the basis that it had been professionally prepared pursuant to a general power of attorney, as the mother was on holiday in Canada at the time. Allowing the brothers' appeal against that decision, the Court of Appeal noted that the mother had specified in her will, which was made shortly before she died, that her home should be sold on her death and the proceeds split equally between her three sons. At the time she executed the will, she had clearly believed that she remained the beneficial owner of the whole property.

The Court of Appeal ruled that the conveyance should be rectified to the effect that the property was held by the mother and her son on trust for the mother absolutely, concluding that 'for whatever reason there was a fundamental mistake in the drafting of the conveyance and it gave the son a benefit which it would be unconscionable for him to keep'.

Contact us for advice on all family agreements and property transfers.

COURT STEPS IN TO REMEDY LAND REGISTRY BLUNDER

A Land Registry error which resulted in two individuals being concurrently registered as freehold owners of the same plot of land has been put right by the Court of Appeal in a test case which raised an important point of principle involving the separation of legal and beneficial ownership in relation to adverse possession (the legal term for claiming legal ownership of a property on the basis of having occupied it for a number of years).

The disputed plot had been part of the registered title to No 29 Milner Street, in Chelsea, Central London, for almost a century. However, in 1986, the Land Registry made a mistake and also registered it as part of No 31 Milner Street. The error was compounded by another, in 2000, when the land was excluded from the title to No 29 whilst a computerised plan was being made of the property. The end result was that the owners of No 29 were, at least on paper, stripped of a piece of land in one of the most expensive areas in the country without any money having changed hands.

The owner of No 29 applied to the Land Registry to restore the land to him. However, the owner of No 31 resisted the application on the basis that she and members of her family before her had been in adverse possession of the plot for more than 12 years (the then time limit) and the existing registration should therefore stand.

The owner of No 31 won the argument before a Land Registry deputy adjudicator and again at the High Court, but that result was reversed on appeal. The Court of Appeal concluded that the owner of No 31 and her predecessors could not have developed adverse possession rights over the plot because, as its registered owners, they had not been trespassers and their occupation had been lawful.

Observing that 'mistakes may be made', Lord Justice Mummery said, "The plain unvarnished fact is that (the owner of No 31) is seeking to take the benefit of a mistake by the Land Registry, which had occurred through no fault of (the owner of No 29) and which it would be unjust not to correct."

If you have a property dispute or any queries over ownership of land, contact us for advice.

NATURAL FATHER DENIED RIGHT TO OPPOSE ADOPTION

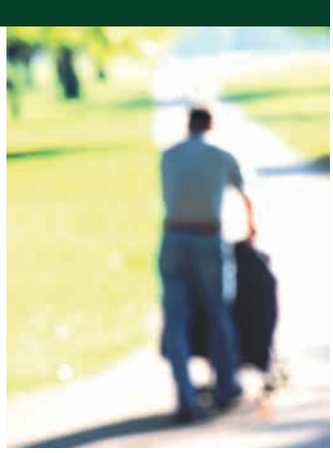
A recent case dealt with the issues surrounding the respective rights of a parent and child in unusual circumstances.

The natural father of the child wished to join in the proceedings to oppose his son being adopted. The unusual feature was that the father had only recently found out that the child was his. Previously, he had mistakenly believed that the boy had been fathered by another man.

The child had been living with the prospective adopters for two years and was both happy and settled. The Court ruled that his best interests would not be served by allowing the natural father to contest the adoption proceedings.

The courts will always give careful consideration to the child's best interests in such cases. In some instances, this may involve decisions which are painful for relatives.

For advice on any family law matter, contact us.



RESTRICTIVE EMPLOYMENT COVENANTS MUST BE REASONABLE

In declaring unenforceable a restrictive covenant contained in a senior financial adviser's employment contract, the High Court has emphasised that such clauses are not worth the paper they are written on if they impinge unnecessarily on the liberty of former employees or amount to an unreasonable restraint of trade.

A company which provides financial advice to corporate and high net worth clients had sought to enforce a restrictive covenant after one of its advisers resigned and took employment with a direct competitor. The covenant purported to restrict the employee, amongst other things, from directly or indirectly being engaged or concerned in a competing business for six months after his departure.

The company asserted that certain of its best clients had moved with the adviser to his new employer and that several other members of its staff had also resigned and joined him in his new role. It was submitted that the covenant was no wider than was necessary to protect the company's legitimate commercial interests.

However, in dismissing the company's claim, the Court underlined that, as a matter of public policy, such clauses are unenforceable if they go beyond what is reasonable between the parties or place restraints on trade that are 'injurious to the public interest'.

Whilst recognising the company's right to maintain the confidentiality of its client information and to place restrictions on employees for the benefit of the business generally, the Court noted that the particular covenant purported, for a six-month period, to restrict the adviser from employment anywhere in the UK, or beyond, in a field in which he had worked for many years.

Ruling that the scope of the covenant was broader than required to protect the company's legitimate interests, the Court also noted that it purported to restrict the adviser from even indirect involvement with competitors, regardless of whether his role would in fact bring him into competition with his formeremployer.

We can advise you on drafting restrictive covenants that will both protect your legitimate business interests and be enforceable by the courts in the event of a legal challenge.

TAX SAVING ADVICE COMPULSORY, RULES COURT

A firm of accountants which failed to point out tax saving opportunities to a client when he sold his company was found to be negligent by the High Court recently. The accountants had failed to bring to the attention of the client the tax saving opportunities available to him because of his not being domiciled in the UK. The best advice in the circumstances would have been to have moved the company to an offshore trust prior to sale. This was not advised.

Wishing to avoid a Capital Gains Tax bill of £850,000, the client instead spent £200,000 joining in a tax planning scheme which was subsequently closed down by HM Revenue and Customs.

The client then sued his accountants for failing to give him the correct advice. The judge accepted his claim, concluding that the accountants had a contractual duty to give him tax planning advice and that a normally competent accountant would have done so.

If you have suffered a loss through having been badly advised by a professional or because of a failure to give advice when this should have been provided, contact us to discuss the possibility of a claim.

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