



# MOSS

S O L I C I T O R S

## WINTER LEGAL REVIEW

Your legal bulletin on news & views from Moss Solicitors LLP

### HOME OWNERSHIP ISSUES



WE AT MOSS SOLICITORS ARE PROUD TO SUPPORT **LOVE LOUGHBOROUGH** AND OFFER A 10% DISCOUNT ON STANDARD FEE RESIDENTIAL CONVEYANCING, WILLS AND LASTING POWERS OF ATTORNEY ON PRODUCTION OF A **LOVE LOUGHBOROUGH** LOYALTY CARD.

SEE WWW.  
LOVELOUGHBOROUGH.CO.UK  
TO APPLY FOR A CARD.

**Moss SOLICITORS LLP**  
80 -81 Woodgate  
Loughborough  
Leicestershire  
LE11 2XE  
Tel: 01509 217770  
Fax: 01509 233698

Unit 11A, Whitwick  
Business Centre  
Stenson Road, Coalville  
Leicestershire, LE67 4JP  
Tel: 01530 815747  
Fax: 01509 233698

Email: [enquiries@moss-solicitors.co.uk](mailto:enquiries@moss-solicitors.co.uk)  
[www.moss-solicitors.co.uk](http://www.moss-solicitors.co.uk)

For many cohabiting couples, buying a property represents a significant commitment, and for understandable reasons they often don't entertain the idea that the relationship may break down.

As a result, proper consideration may not be given to the thorny issue of what should happen with the property if the relationship does end. If agreement can't be reached as to whether it should be sold and/or the division of equity, problems can arise, leading to costly disputes.

If cohabitees make unequal contributions to the costs of buying a property (e.g. the deposit, or monthly mortgage repayments) but own the property as Joint Tenants, it will be assumed that they intended to share the equity equally. Also, upon the death of one Joint Tenant, the property will automatically pass (by survivorship) to the other – even though they wouldn't



be entitled to inherit under the Intestacy Rules. This can deprive children of their deceased parent's share, increasingly relevant given the number of couples that decide to co-habit following an earlier divorce.

If a couple own a property as Tenants in Common, although it won't pass by survivorship, they will still be presumed to be equally entitled to the equity, regardless of contribution. Less commonly, the property will be in only one person's name, despite the fact that both are making contributions.

Difficulties can also arise in extracting the equity: often one partner will need their

share to use as a deposit towards the purchase of another property, and for their name to be taken off the jointly owned property to enable them to obtain a mortgage for the new property.

Given the right circumstances, the person who made the greater contribution may be able to obtain a court declaration that they are entitled to more than an equal share of the equity. Likewise there may be scope for the person keen to sell to obtain a court order compelling the other to co-operate with the sale process.

***The law relating to property co-ownership is by no means simple or straightforward, and if you would like advice or assistance regarding your situation, please contact: Nick Gay ([n.gay@moss-solicitors.co.uk](mailto:n.gay@moss-solicitors.co.uk), or Laura Anderson ([l.anderson@moss-solicitors.co.uk](mailto:l.anderson@moss-solicitors.co.uk))***

### ACAS PUBLISHES NEW ADVICE ON RECRUITMENT AND INDUCTION

Getting the recruitment process right is vital to ensure that you not only select the most suitable candidate for the vacancy but also do so without falling foul of the applicable law.

To this end, the Advisory, Conciliation and Arbitration Service (Acas) has launched two new guides for employers and managers to

assist with recruiting new staff and also with designing a successful induction programme.

The guides, which are available on the Acas website [www.acas.org.uk](http://www.acas.org.uk), also include free tools, templates and check lists to assist in the recruitment and induction processes.

***Contact us if you would like individual advice on any recruitment matter.***

## LANDLORDS BEWARE – NEW RULES APPLY TO ASSURED SHORTHOLD TENANCIES ENTERED INTO ON OR AFTER 1 OCTOBER 2015

Recovering possession of a property from a tenant is not always straightforward. Most landlords of residential property will let their properties using an Assured Shorthold Tenancy (AST); for tenancies entered into on or after 1 October 2015, the regime governing possession has become more stringent, and additional conditions must be satisfied if a landlord wants to serve a valid Section 21 Notice and be able to obtain a possession order.

- A particular form of Section 21 notice must be used (previously any form of notice could be used so long as certain information was given)
- A Section 21 notice cannot be served in the first four months of a tenancy (ruling out service on the

first day of a tenancy, to expire on the last day of the initial fixed term)

- A Section 21 notice is only valid if a landlord has given a tenant a current Gas Safety Certificate, Energy Performance Certificate, and a copy of the government's guide 'How to Rent' (GSC and EPC should arguably be provided before the tenancy actually starts)
- Depending on the type of Section 21 Notice, a landlord may not be able to issue a claim for a possession order more than 6 months after notice was given
- There is a prohibition on serving a Section 21 Notice where a tenant has complained about a landlord's failure to carry out necessary repairs, to avoid so-called 'retaliatory evictions',

if certain criteria are met Since 1 October 2015 (irrespective of the start date of an AST) all landlords must ensure their properties are equipped with smoke alarms and carbon monoxide detectors: smoke alarms must be installed on each storey of a property being used for living accommodation; carbon monoxide detectors must be installed in each room used as living accommodation in which solid fuel is used. Fines of up to £5,000 can be issued for non-compliance.

***The law relating to Landlords and Tenants is not straightforward. If you would like advice, please contact Nick Gay (n.gay@moss-solicitors.co.uk) or Laura Anderson (l.anderson@mossolicitors.co.uk).***

## ONLINE ASSETS 'IN LIMBO' WARNING

According to a recent survey by the Co-op, more than 94% of all adults in the UK have an online account, yet only a quarter have put in place any mechanism for them to be dealt with after they die.

With the average online asset value exceeding £250, the total value of assets involved is estimated to exceed £17 billion. If you have online accounts, even if only for books and films, for

example, it is sensible to make sure your loved ones are aware of them and can access them after your death. ***For advice on all aspects of estate planning, contact us.***

## UNEXPECTED INHERITANCE MEANS DIVORCE SETTLEMENT ALTERED

For the most part, the cases dealing with financial settlements on divorce that make the headlines are those involving the very wealthy, but those concerning the more modestly situated are also important.



One of the more common issues that can arise in such cases is that the financial circumstances of one of the divorced couple change markedly after the financial arrangements have been settled, as happened in a recent case.

agreed to vary the order so that she became sole owner of what had been the family home. Her ex-husband appealed against that decision, arguing that his ex-wife's needs had not changed, so his inheritance should not be taken into account.

The couple involved split up in 2010 after a nine-year marriage. Their only significant asset was their matrimonial home, which was worth £175,000 net of the mortgage. The settlement made was that the wife would continue to live in the house and, on its eventual sale, she would receive 55% of the sale proceeds and her husband 45%.

The Court of Appeal accepted that had the imminent demise of the husband's father been known about when the financial settlement was being decided, it would have influenced the arrangements. It upheld the decision of the High Court.

The husband is a self-employed painter-decorator and earns a low income, so there was no maintenance order. He bought a smaller house with a 75% mortgage. Shortly after the divorce was finalised, his father died and he inherited £180,000. His ex-wife went to the High Court to obtain a variation of the original order. The family court

In similar circumstances, it may be possible to obtain a variation of a financial settlement. ***There is no substitute for good quality legal advice at all stages of a marriage break-up. Our family law department is able to provide expert representation in all areas of family law.***

## KINDLY BUILDER CAN KEEP £470,000 INHERITANCE



A kindly builder, who was rewarded with a £470,000 inheritance after befriending a pensioner and mending his leaking gutters free, can keep the money after a judge dismissed a challenge to the deceased's will brought by his family.

The pensioner died at his home aged 73, but his body lay undiscovered for several weeks. Shortly before he died, he had signed a will leaving everything he had to the builder. The latter said

that their friendship had flowered when he helped him out with odd jobs, visited him regularly and chatted to him about sport and the weather.

The pensioner's sole surviving blood relative, a distant cousin, and the children of an old family friend, who regarded him as their uncle, would have inherited under an earlier will. Although they accepted that he had mental capacity to make a valid will, and that his signature was not a forgery, they argued that the bequest to the builder was so inexplicable as to arouse suspicion.

In submitting that the pensioner did not fully comprehend or approve the contents of the will, the former beneficiaries argued that he had nothing in common with the builder and had no need of more friends. He was said to be a carpentry and DIY enthusiast who did not require the builder's assistance. At no time had he mentioned the builder to them and

they had not met him before the pensioner's death.

However, in upholding the validity of the final will, the judge described the builder as a truthful and straightforward witness. He had been kind to the pensioner and they had discovered a real shared interest in mutual chat, banter and human interest stories. There was nothing suspicious about the way in which the will had been executed and initial claims – subsequently abandoned – that the pensioner's signature was a forgery had been undermined by expert handwriting evidence.

Challenges to wills by disappointed relatives are by no means infrequent even where, as in this case, the deceased's nearest relative was clearly not close to him.

***Taking appropriate legal advice and executing a valid will can help see off such claims at an early stage.***

## NEW MINIMUM WAGE RATES AND TOUGHER ENFORCEMENT

Employers are reminded that the following changes to the National Minimum Wage (NMW) rates came into effect on 1 October 2015:

- the adult NMW rate increased from £6.50 to £6.70 per hour;
- the NMW rate for workers aged 18 to 20 increased from £5.13 to £5.30 per hour;
- the NMW rate for 16- and 17-year-olds increased from £3.79 to £3.87 per hour; and
- the apprentice rate of the NMW, which applies to apprentices under 19 or over 19 and in the first year of their apprenticeship, increased from £2.73 to £3.30 per hour. The accommodation offset increased from £5.08 to £5.35 per day.

The new National Living Wage (NLW), announced in the Chancellor of the Exchequer's July Budget, is due to come into force in April 2016. It will apply to workers aged 25 and over and will be paid at an initial rate of £7.20 per hour.

On 1 September 2015, the Government announced that the penalty for non-payment of the NMW or the NLW will be doubled to 200 per cent of the arrears. This will be halved if the employer pays the penalty within 14 days. The overall maximum penalty of £20,000 per worker remains unchanged.

In addition, a new team of HM Revenue and Customs (HMRC) compliance officers will be set up to investigate the most serious cases of non-payment of the NMW and the NLW when it is introduced, and take forward criminal prosecutions for deliberate non-compliance with the law.

## NEED IS THE ESSENTIAL CONSIDERATION IN DIVORCE SETTLEMENT

Pre-nuptial agreements are rapidly becoming the norm when very wealthy people marry, but the courts are still inconsistent when it comes to decisions regarding the division of wealth when a 'pre-nup' does not exist.

In a recent case, a couple who divorced in 2013 with combined assets of some £25 million were in dispute over the division of their wealth. The husband claimed the lion's share on the basis that he had created almost all of it through his activities as a property developer and his much younger wife (a florist) should be entitled to no more than the standard of living she had enjoyed before their marriage. The couple had no children.

His ex-wife had claimed nearly £9 million, based on the usual presumption that wealth created during a marriage should be shared more or less equally. His offer – based on her needs as he saw them – was £3.5 million.

The court ruled that her financial needs could be met with a settlement of £5.6 million. This included a £2 million country home, a flat in London, £65,000 for a new car and £2.5 million in cash. She will receive no maintenance, however.

## HOW DO HOLIDAY AND SICK LEAVE INTERACT? TRIBUNAL GIVES GUIDANCE



The interaction between sick leave and annual holiday leave poses a tricky problem for employers. In *Plumb v Duncan Print Group Limited*, the Employment Appeal Tribunal (EAT) has clarified the position with regard to the basic four weeks' statutory holiday entitlement guaranteed under the European Working Time Directive (WTD) for employees who have to take prolonged periods off work for medical reasons.

Mr Plumb started working for Duncan Print Group as a printer in November 1987. In April 2010, he sustained an injury at work and was on sick leave for more than three years. He did not take holiday leave during those years and,

after his employment was terminated in February 2014, he sought payment in lieu of those entitlements. His leave year ran from 1 February to 31 January.

The Employment Tribunal (ET) dismissed his claim on the basis that he could not show that he was unable, by reason of his medical condition, to take annual leave.

In allowing Mr Plumb's appeal, the EAT identified a mismatch between the Working Time Regulations 1998 (WTR) and the WTD, which they implement into UK law. Under Article 7 of the WTD, an employee who is on sick leave, and who would be permitted to take paid annual leave during that sick leave, is not required to take annual leave but may choose to do so.

The ET had erred in concluding that Mr Plumb was required to demonstrate that he had been medically incapable of taking holiday leave in order to carry forward his annual leave entitlement. Having decided not to take the leave, he was entitled to do so at a later date. Regulation 13(9) of the WTR, which provides that annual leave may only be taken in the leave year in respect of which it is due, must be interpreted

accordingly in order to give effect to the WTD.

The EAT acknowledged that the WTD did not confer an unlimited right on sick workers to carry over periods of annual leave to subsequent years. However, in interpreting the WTR in conformity with the WTD, it found that employees on sick leave are entitled to take holiday leave within 18 months of the end of the year in which the entitlement to that leave accrued.

In this case, Mr Plumb was entitled to payment in lieu of annual leave in respect of the 1 February 2012 to 31 January 2013 leave year but not for the earlier leave years. The matter of the precise amount of the payment was remitted to the ET for determination in the light of the EAT's judgment.

Both parties were granted leave to appeal to the Court of Appeal.

***Disputes concerning holiday pay entitlement are common. For clarity on the applicable law, contact us.***

---

## ROGUE DIRECTORS MUST FACE THE MUSIC

In a decision that will cause palpitations for miscreant directors, the Supreme Court has made a ruling that will comfort creditors of insolvent companies who might otherwise be left to nurse losses without any hope of recompense.

The case concerned a company which was put into liquidation and the liquidators brought proceedings against its former directors alleging a conspiracy to commit 'carousel fraud' to the company's detriment. The alleged fraud involved the fraudulent trading of 'Trading Scheme Allowances' under the European Emissions Trading Scheme.

The directors attributed the misdoings to the company and denied liability. However, the Court ruled that where a creditor falls victim to a fraudulent or dishonest act which is committed by a director or directors, who in turn are in breach of their fiduciary duty to the company, then the creditors have the right to take action against the director(s).

***For advice on what steps you can take to protect your interests in the event of the insolvency of a person or company that owes you money, contact us.***

# MOSS

S O L I C I T O R S

80 -81 Woodgate, Loughborough, LE11 2XE

Tel: 01509 217770 Fax: 01509 233698

Email: [enquiries@moss-solicitors.co.uk](mailto:enquiries@moss-solicitors.co.uk)

web: [www.moss-solicitors.co.uk](http://www.moss-solicitors.co.uk)

Authorised and Regulated by the Solicitors' Regulation Authority - SRA N° 401191

A list of members is available for inspection at the above address.

Moss Solicitors LLP is a Limited Liability Partnership.

Registered in England Number OC307297

# WOODGATE

F I N A N C I A L P L A N N I N G L T D

an associated business of Moss Solicitors LLP

80 -81 Woodgate, Loughborough, LE11 2XE

Tel: 01509 635467 Fax: 01509 233698

Email: [enquiries@woodgatefp.co.uk](mailto:enquiries@woodgatefp.co.uk)

web: [www.woodgatefp.co.uk](http://www.woodgatefp.co.uk)

Woodgate Financial Planning Ltd is an appointed representative of Chesterton House Financial Planning Ltd, and is authorised and regulated by the Financial Conduct Authority. Registration No. 4662503 (ENGLAND).