



## LEGAL REVIEW AUTUMN 2019

Your legal bulletin on news & views from Moss Solicitors LLP

### PROPERTY ISSUES UPON RELATIONSHIP BREAKDOWN

MOSS SOLICITORS ARE DELIGHTED TO WELCOME BACK LAURA ANDERSON, WHO RETURNS FROM MATERNITY LEAVE TO RESUME HER ROLE IN THE DISPUTE RESOLUTION AND EMPLOYMENT TEAM.

***In this article, Laura covers some important considerations when buying property with a partner to avoid disputes in the event of relationship breakdown.***

For many, a property is the most expensive purchase that they will ever make, and for understandable reasons people are keen to get on to, and then move up, the property ladder. This keenness can have a downside however; problems can arise if a couple did not specify at the time of purchase what should happen in the event of a breakdown in the relationship?

However, whilst those problems may be significant, that does not mean that they cannot be overcome.

One problem that commonly arises is where the parties made unequal contributions to the costs of purchasing the property; if a Declaration of Trust (a document setting out who owns what share) was not signed at the time of purchase, the assumption will be that the property is owned equally. A potential solution, given the right circumstances, is for the person who made the greater contribution to apply to the court for a declaration that they are, in fact, entitled to more than simply an equal share of the equity.

Another problem that can arise relates to what is to happen to the property? It is not unusual for someone to have contributed to a purchase using the proceeds from a previous sale. To be able to buy another property, it may be necessary to extract that contribution. If both parties agree to a sale, then there may be no difficulty. However if one of them objects, it can be problematic for the other.



Laura Anderson

Fortunately, there is scope for the person keen to sell to apply to the court for an 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 however, and if you would like advice or assistance regarding your situation, please contact:***

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## NO-FAULT EVICTION TO END: LANDLORD & TENANT LAW

Talk to a tenant and the lack of security of tenure is often brought up as a significant issue. For landlords, the inability easily to obtain possession of a tenanted property can often cause angst.

There is little dispute that a good-quality, settled tenancy is of benefit to both. With the private rented sector now constituting nearly 20 per cent of all households, the Government recognises the need for longer, more secure tenancies and launched a consultation on the subject in July 2018, receiving nearly 9,000 responses.

The principal issue for tenants was identified as being that because



'no-fault' eviction can take place with as little as two months' notice, 'people renting from private landlords have been left feeling insecure by short fixed-term tenancies, unable to plan for the future or call where they live a home'.

The Government has therefore decided to put an end to no-fault eviction by repealing Section 21 of the Housing Act 1988, and to protect landlords' interests by strengthening Section 8, so that those wishing to regain a property in order to live in or sell it will have an easier process. In addition, the Government has promised to simplify the court processes for gaining possession of let properties where circumstances allow it.

A further consultation will now take place to consider how to deal with the outstanding issues.

**For advice on any aspect of landlord and tenant law, contact us.**

## PROBATE DELAYS

The installation of new software designed to speed up the granting of probate has had the opposite effect because of teething problems. The average time needed for probate to

be granted by the Probate Registry has increased from about ten days to six weeks or more, and in some cases the grant of probate can take up to three months.

## INFORMAL AGREEMENT LEADS FAMILY TO COURT OF APPEAL

Disputes within families are very common indeed and one of the issues the courts see over and over again is where there is a family 'understanding' that ends in a disagreement.

In a recent case, the result of one such dispute was that an 82-year-old woman will be forced to sell the home she has lived in for decades.

Many such cases involve farming businesses. These traditionally pass down from generation to generation, and often one child will work on the farm for many years with the others moving away. It is commonplace in such circumstances for the business to be passed on to the child who has farmed the land. Such was the case in this instance.

The family farm is worth in the region of £4 million and was farmed by a couple



for more than 40 years. One of their four children remained at home and worked the farm with her parents for little pay. When her father died in 2014, his will passed his entire estate across to the mother. However, the daughter claimed she had been promised that she would inherit the farming business, which in any event could not be carried on by her mother.

The daughter was awarded more than £1 million of the value of the farm, a

sum that would force her mother to sell her house and farmland.

The mother appealed that decision, arguing that she and her husband had offered to sell the farm to their daughter years ago, but she had turned them down. However, the Court of Appeal would not accept that the rejected offer and the promise to pass the business on were related. The promise made by the couple had to be honoured: the appeal was dismissed.

**If you are in business with a family member, it is essential to make sure that the legal obligations of those involved are clearly communicated and recorded. Relying on informal understandings is a recipe for disaster.**

**Contact us for advice.**

## TERMINATION PAYMENT CHANGES

The glory days of termination payments (usually made under a settlement agreement) appear to be over as the Government has introduced a Bill into Parliament that will levy a 13.8% employer National Insurance Contributions (NICs) charge on any termination payment in excess of £30,000. The charge will only apply where the recipient of the termination award is not of pensionable age.

The exemption from Income Tax of the first £30,000 paid for termination of employment will remain. The Bill also confirms that a 13.8% NICs charge will apply to testimonials for sportspeople where the payment exceeds £100,000.

For full details, see the National Insurance Contributions (Termination Awards and Sporting Testimonials) Bill factsheet on the Government website (<https://bit.ly/2Vchlep>).

The changes are scheduled to come into effect in April 2020.

## SACKED FOOTBALL CLUB LOTTERY SALESMAN WINS UNFAIR DISMISSAL CLAIM

Dismissing an employee for gross misconduct is a very serious matter and that is why steps must be taken to ensure that the procedures followed are scrupulously fair. A football club's summary sacking of a long-serving lottery ticket salesman provided an instructive example of exactly how it should not be done (*Hitchen v Bury Football Club Limited*).

Throughout his 13 years of trusted service, the salesman had deducted commission from the cash he collected on ticket sales. Following a rebranding of the lottery, however, he was informed that his commission would in future be paid as part of his salary. He did not agree with the new system and, in the belief that it had not been finally adopted, continued to take his commission at source.

The club suspended him on the basis that he had deliberately ignored a lawful instruction and he was dismissed for purported gross misconduct four days later. His internal appeal against that decision failed.



In upholding his unfair dismissal claim, an Employment Tribunal found that he had been ambushed at the disciplinary hearing, to which he was summoned without prior notice. Although Section 10 of the Employment Relations Act 1999 gives employees and workers a legal right to be accompanied by a trade union representative or colleague at a disciplinary or grievance hearing (including any appeal hearings), he was not given that opportunity and was not informed in advance of the charge he faced.

The appeal was presided over by a manager who had been previously involved in the disciplinary process

and who could in no sense be considered independent.

The club had sought to unilaterally change the salesman's employment contract and had proceeded on the assumption that, if he failed to cooperate, summary dismissal was the only option. No account had been taken of his flawless disciplinary record or the possibility of imposing a lesser sanction. The breaches of the Advisory, Conciliation and Arbitration Service's Code of Practice on disciplinary and grievance procedures, which the manager who heard the appeal admitted he had not read, were numerous. The speed of the disciplinary process precluded the possibility of a reasonable investigation and meant that the salesman had no time to reflect.

The club was ordered to pay the salesman a total of £16,678 in compensation.

**Contact us for advice on handling any disciplinary or grievance matter.**

## HALF OF ESTATE VALUE GOES IN FEES WHEN WILL LOST

When a person is appointed executor of an estate, they are given a reasonable period to progress the estate administration but cannot procrastinate without adverse consequences being likely.

When a woman died intestate in 2012, she left behind a house and about £70,000 worth of other assets. Her estate stood to be distributed between her three children. She had made several wills, but none was valid.

One of the children took on the job of administering the estate and appointed a probate company recommended by her bank to assist. Probate was granted 15 months after the woman's death. Then nothing happened. Two years later it was claimed that the daughter who was administering the estate continued to live in their late mother's house, which was neither cleared nor rented out and had not been marketed for sale.

When this led to a claim, the daughter living in the house contended that she had a beneficial interest in the property as a result of having made a financial contribution to its purchase and that she had a claim against the estate under the Inheritance (Provision for Family and Dependents) Act

1975. She later found a further will which gave her all but a small proportion of the estate. This was contested by one of her siblings. The third sibling lives in the Caribbean and took no part in the dispute.

The dispute was eventually resolved, but because of the complicated litigation history, the costs were very substantial – eventually representing half the value of the estate. The question then arose as to who should pay them. The judge ruled that the late discovery of the will was not a failing that could be laid at the door of any of the children. It was found in papers to which it was not related and the blame for it not being easy to find lay with the deceased woman.

The result was a costs order that placed the legal costs in the laps of the estate, the executor and the probate lawyers.

The lessons to be learned from this are that the administration of an estate should be dealt with as quickly as is reasonably possible and also that you should make sure that your will is kept somewhere where it can be easily retrieved by your executor, who should be made aware of its location.

**For advice on making sure your estate is dealt with efficiently, contact us.**

## 5 WAYS VALUES-BASED FINANCIAL PLANNING CAN HELP YOU

WE CAN'T ESCAPE MAKING DECISIONS ABOUT MONEY. EVERY TIME WE BUY A COFFEE ON THE WAY TO WORK, TRAVEL BY CAR, PLANE, BUS OR TRAIN, OR USE OUR MOBILE PHONE, WE ARE PUTTING MONEY INTO ACTION. WE THINK ABOUT OUR IMMEDIATE FINANCES ALL THE TIME.

But what about the longer term? How often do you think deeply about your goals for the next 5, 10, or 25 years or more? Here's how our Values-Based Financial Planning service can help you.



### PLANNING YOUR FINANCIAL FUTURE

We've found that you will have a higher probability of succeeding with your financial goals if they are truly important to you, and in harmony with your values. Values-Based Financial Planning does exactly that. It takes you on a deep dive into what's truly important to you in a way that you won't have experienced before. Our Financial Road Map process is at the heart of our service, and it's helped hundreds of people towards greater financial success in their lives. It can do the same for you too.

Having a Financial Plan based on your Financial Road Map will help you in many other practical ways. Here are some of them:

#### 1. You will achieve your goals

- Want to retire at a certain age? We'll help to make this a reality.
- Want to leave a legacy to your children? We'll tell you how you can.

- Want to invest in a way that's rewarding and worry-free? We'll help you create a portfolio to do just that.

#### 2. You will get rid of your debt and create cash for future goals

- Excessive debt is like a serious illness eating away at your future security. We'll work with you to help you eliminate your debt over a period of time.



David Wright (Director)

#### 3. You will look after your family's future

- Retirement, insurance, inheritance and Wills are all important steps to consider when planning your family's legacy. Our experts working alongside the legal team at Moss Solicitors will create a bespoke plan for you.

#### 4. Your wealth will grow

- Our investment specialists are experts in helping you to grow your wealth. We'll help you choose investments that are right for you, and then we'll monitor, review and adjust your portfolio to suit changing conditions.

#### 5. You will have a secure plan for your future

- Every part of your Financial Plan is designed around your unique circumstances and goals. Our clients often tell us that our service helps them to sleep easily at night, knowing that everything is in its proper place and under control. It can do the same for you.

***The service that we offer at Woodgate is different to other IFAs; we are totally focused on your Plan, your Goals, and your Life.***

***If you'd like more information about how we could help you or someone you know, call us on 01509 635 467 or email [enquiries@woodgatefp.co.uk](mailto:enquiries@woodgatefp.co.uk).***



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