

Will Signed by Beneficiary Valid

Among the requirements for a will to be valid are that it must not be witnessed by a beneficiary and it must be signed at the bottom by the testator (the person making it) or, if they are unable to sign it, under their direction.

You would therefore be forgiven for thinking that a will that was 'signed' by the beneficiary would stand little chance of acceptance, but a recent and unusual case, which was heard by the High Court and then retried when new evidence came to light, proved an exception to the rule.

On the day he died in 2004, the testator had created a will in favour of his daughter. Because of his infirmity, he could not hold his hand steady and the nurses attending him gave evidence that his daughter (or possibly his granddaughter) 'steadied his hand' so that he could sign the will, which the nurses then witnessed. The original testimony of the nurses was that the man's daughter had played no part whatsoever in the signing process, but they subsequently changed their evidence.

Expert witness evidence was produced, which stated that there was 'conclusive evidence to support the view that the questioned signature on the [2004] Will [...] was not produced in the manner described in the recent witness statements (namely with [Anne] merely assisting [Martin] so as to steady his shaking hand)'.

Also, since the case was originally heard, an earlier will had been found, executed in 2002. This made an entirely different disposition of the man's assets. There was no dispute that the earlier will, made with professional advice, was valid when it was made.



The issue before the Court was whether the 2004 will complied with the requirements of the Wills Act, which are that it must be made 'in writing, and signed by the testator, or by some other person in his presence and by his direction', and also that the testator knew and approved the contents of the will when it was signed.

In a long judgment, Mr Justice Vos concluded that the man's daughter had signed her father's name on the will, but concluded that she had done so on his behalf and at his direction. The will was therefore valid.

An appeal against this decision is considered likely.

Family Feud Breaks Out Over Deathbed Marriage and Will

The combination of a deathbed marriage, a millionaire and a new will was always likely to end in a court battle, and so it proved recently when a family challenged their late father's will, which left everything to his new wife, who had been his partner for more than 30 years. The couple were married at the man's home shortly before he died in 2008. His three daughters are now contesting his will.

Under the new will, the man's wife was bequeathed his entire estate. His solicitor testified that his instructions regarding the will had been

clear. However, the man's family claim that his widow used undue influence over him, at a time when he was weak, in order to persuade him to write a new will in her favour.

This case is yet another example of how easy it is for acrimonious disputes to develop in families when arrangements are left to be dealt with at the last minute.

Contact us for advice on any will or probate matter.

Wind Turbines – New Planning Regulations on the Way

The UK has been proceeding apace in its attempts to develop 'green' energy, and wind turbines are appearing all over the country – including in such seemingly unlikely spots as beside the M25.

However, no matter what their benefits as regards renewable electricity production are, having a wind turbine close by can not only impair your visual amenity but can also prove to be a considerable noise nuisance.

The informal 'standard' for the minimum distance between a wind turbine and a residential property is about 350 metres. However, the advent of numerous complaints about noise nuisance where the turbines are further away than that from the premises that are affected has led to a re-think.

A Lincolnshire couple is currently claiming compensation for the nuisance and economic loss created by a wind turbine positioned a kilometre from their house. They claim that the property has been rendered unsaleable by the noise of the device.

It is likely that legislation currently before Parliament, which sets minimum separation standards between wind turbines and residential properties, will come into effect in 2012.

If you become aware of a planning application for a wind turbine or other structure (such as a mobile phone mast) in your vicinity and wish to oppose it, we can advise you on what steps to take.

Swiss Assets Unfrozen by Court

When a marriage or civil partnership breaks up and there is a significant risk that one party may move assets (normally cash in bank accounts) 'out of sight', it is sometimes possible to obtain a 'freezing order' to prevent the sums being transferred.

Whether or not a freezing order will be granted will depend on the following tests:

- Is there a good case, supported by objective facts and evidence, that the assets are likely to be moved, with the intention of defeating a claim on them?

- If a request to freeze assets without notice is made, is there positive evidence that the giving of notice would lead to irretrievable prejudice to the applicant?

- If the application is made for an 'ex parte' order (one where the other party is not present at the application), has the applicant been completely open and honest with the court?

These pose quite a high hurdle for the applicant for a freezing order. Recently, an application by a woman to freeze various Swiss bank accounts controlled by her husband was initially granted but

the freezing order was then subject to an application by her husband to discharge it. His application was granted, the judge concluding that although it might well be desirable for the wife to have the accounts frozen, the continuation of the order would be oppressive and vexatious for the husband.

We can advise on all aspects of family law, including the best strategy to adopt in proceedings and when negotiating financial settlements.

House Sales – Replying to Enquiries

When a house is bought or sold, the prospective purchaser makes what are called 'pre-contract enquiries' in order to establish the exact details of the property being bought. These are normally in the form of a standard set of questions with any necessary amendments.

However, the fact that the questions raised are in standard form does not mean this can be treated as just a 'form-filling' exercise by the vendor, because the law of misrepresentation may apply where any response made is sufficiently at variance with the truth.

For the contract to purchase to have been procured by misrepresentation, it is necessary that the seller has made a reply which is factually untrue, as a result of which the buyer has entered into the contract to his or her detriment.

A person induced into entering into a contract by misrepresentation may be entitled to damages or to rescind the contract. Attempts to limit liability for errors and mistakes in replies to pre-contract enquiries will normally only be

upheld by the courts if the limitation is reasonable.

It is particularly common, it seems, for vendors to fail to disclose known structural defects and long-running disputes with neighbours. Knowingly making a false claim or failing to disclose a salient fact can be a dangerous strategy.

A purchaser can go some way to protecting his or her position by making sure any particular questions on which they wish to have specific assurances are clearly put to the vendor. Some risks (such as title defects) can be insured against.

For advice on all aspects of the law relating to buying or selling property, contact us.



Compulsory Purchase – Appropriate Compensation

When a compulsory purchase order is made, the acquirer must make a fair valuation of the property being acquired so that appropriate compensation can be paid.

In making the valuation, all relevant circumstances have to be taken into account.

When a house in Newham was acquired by the Borough by compulsory purchase, the Council's valuer referred to three comparable properties in setting his valuation at £300,000.

However, the valuer also took account of the poor condition of the property and reduced the valuation appropriately.

The owner of the house estimated its value at £420,000, which the Lands Chamber found was unsupportable. The Chamber held that the correct valuation was the amount that the property would be expected to sell for on the open market. The house was not in good condition. Any purchaser would have to spend money on it and the valuation should therefore be adjusted to reflect this.

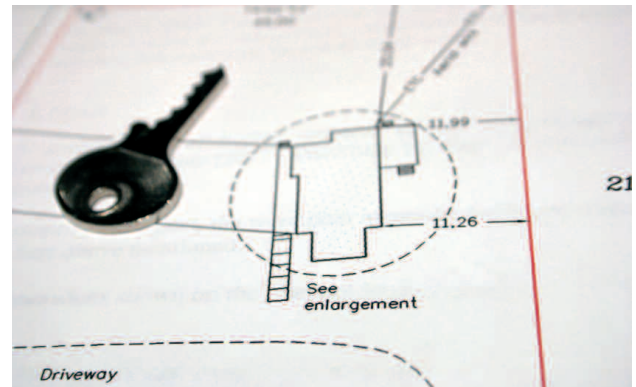
Pyrrhic Victory in Boundary Dispute

When applying to register land for the first time, a man who knew that a small piece of the land had been the subject of an ownership dispute failed to inform the Land Registry of this fact. There had been extensive correspondence regarding the dispute, but it had come to nothing and the issue had not been raised for more than a decade. The registration application was made by the son of the previous owner, following her death.

The affected neighbour disputed the registration because a 1939 conveyance (when both properties were bought from a third party) had retained for the vendor the piece of land in question, when the rest of the land was sold. This land had subsequently passed to the neighbour in a 1989 conveyance and should not, therefore, have been included in the registration application. This conveyance had not been registered at the Land Registry, however.

To remove the land from the title register without the man's agreement, it would be necessary to show that his application had been fraudulent or lacked proper care, and that it would be unjust not to remove the title to the land.

The court considered that by not disclosing the previous correspondence, the man had acted without proper care



and his application to register title to the land must therefore be amended to exclude the piece of land in question. However, the title did not pass to the neighbour who brought the action. Crucially, her failure to register the 1989 conveyance meant that the title reverted to the original vendor.

This would not be the first 'victory' that produces little fruit for the victor. It highlights the importance of approaching all legal transactions with care and making sure that all necessary paperwork is completed properly and the appropriate disclosures are made.

Children's Interests Need to be Assessed Individually

The cardinal rule in proceedings involving children is that the welfare of the child comes first. In some cases, the interests of individual children in a family are sufficiently different for them to be considered separately.

In a case involving a Canadian man and his British wife, who had separated leaving their two sons living with their mother, this was exactly what happened. The two boys were 16 and 12 years old at the time of the hearing and had regular contact with their father, who remained resident in the UK although he expressed a desire to return to Canada. After visiting Canada with him on holiday, the boys were keen to move there to live with him and gave cogent evidence supporting their wishes.

Noting that the current arrangements, whereby the boys lived with their mother, were 'working well', the judge nonetheless granted the father's application. The mother appealed, but only in respect of the younger child, arguing that his circumstances were such that moving abroad would not be in his best interests.

The Court of Appeal considered that the judge had erred in treating the two boys as 'one unit' and upheld the mother's appeal.

In this case, the Court held that what was beneficial for the younger child was not the same as for his elder brother and the needs of the two had to be assessed separately.

For advice on all matrimonial law matters, contact us.

I Hear You Knocking (and Drilling and Sawing...)

Noisy neighbours can be the bane of one's existence, so it is no real surprise that a lesbian couple finally lost patience with their adjoining next-door neighbours after they had workmen carrying out extensive building work on their property for a period of five years.

The work was scheduled to take one year, but the project overran, causing serious disturbance to the women as well as damage to their property. The couple also claimed that they had suffered harassment, with the defendants behaving aggressively toward them, leaving them abusive notes and refusing to take any steps to rectify the damage done to their property or ameliorate the nuisance.

One of the couple developed symptoms of stress to the extent that she could no longer work. The women brought claims for nuisance and trespass and one brought a claim for personal injury and loss of earnings.

In court, the women were awarded damages for loss of amenity and enjoyment and for nuisance. Although it was agreed that harassment had occurred, the judge excluded an award for damages for personal injury because it could not be shown that the woman's psychological injury was a reasonably foreseeable result of the behaviour of the defendants. The woman appealed and the case reached the Court of Appeal.

The Court held that there was no need for the harm to be reasonably foreseeable to create a valid claim. It was sufficient that the behaviour constituted deliberate harassment and caused the injury. The Court awarded damages for personal injury of more than £140,000.

If you have problems with neighbours who persistently cause nuisance or who harass you, we may be able to assist.

Cohabitation Plans Dropped

For the second time in the last few years, plans to legislate to give couples who live together for a long period rights similar to those of spouses and civil partners have been dropped.

There is no such thing as a 'common law' spouse and when cohabiting couples of long standing break up, many difficulties can arise. These can often be avoided if a 'living together agreement' is undertaken and special care should be taken over the form of home ownership.



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