GRANT SAW
SOLICITORS LLP
Incorporating Lawbridge Solicitors

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Your quarterly bulletin on legal news and views from Grant Saw Solicitors LLP

Legal UPDATE

Onerous Leasehold Terms to be Banned

Following an outcry over the terms that apply to the purchase of new leasehold properties in some circumstances, the Government conducted a public consultation. This has now reported and legislation is expected soon to deal with the abuses identified.

Many unfair practices were reported as the sale of new properties on a leasehold, rather than freehold, basis has proliferated and some of the leases contain onerous terms that apply in the long run. Describing the practices as 'practically feudal and entirely unjustifiable', the Secretary of State for Communities and Local Government decided to end them 'once and for all'.

Legislation will be brought forward as soon as possible to put a stop to the sale of leaseholds over new-build houses or existing freehold houses, except in exceptional circumstances.

In addition, the ground rents on newly established leases of houses and flats will be set at zero and

the Government is looking at ways owners of leasehold properties with escalating ground rents can be protected and have the right to acquire the freehold.

If you have bought a property on a leasehold and discovered later that there were onerous terms of which you were not aware, contact us for advice.

Flat Tenants – Taking Over Management Can Be a Legal Minefield

Most leaseholders would like to obtain the right to manage their own premises. However, as one tribunal case shows, there are many potential pitfalls, so seeking professional legal advice is always a wise precaution.

The four qualifying tenants of a block of flats had set up a 'right to manage' (RTM) company with a view to exercising their right to take over the block's management under the Commonhold and Leasehold Reform Act 2002. Their attempt to do so was, however, determinedly resisted by their landlord.

As all four tenants were members of the company, there was no need for them to be formally invited to participate in the process. However, the Act required that the company serve each of them personally with a copy of the claim notice. The landlord argued that that had not been done and that the failure to follow the procedures laid down by the Act to the letter had undermined the entire process.

Those arguments were, however, rejected by the First-tier Tribunal on the basis that the tenants had all been served with the claim notice by email. In dismissing the landlord's challenge to that ruling, the Upper Tribunal found that email was a valid method of service. Even had that not been the case, service by email had caused no prejudice to the landlord and would not have automatically invalidated all subsequent steps in the process.

If you and your fellow leaseholders would like to take over the management of your property, we can advise you how to form an RTM company and comply with all necessary legal procedures.

Casting Aspersions to Change Inheritance Proves Unsuccessful

Wills made or varied just before death are a frequent source of dispute and court appearances, and it was just such an occurrence that led to a High Court hearing recently.

The case concerned the one-million-euro estate of a woman who died in 2014, two days after making a will leaving everything to one of her two daughters, who was also made executor of the estate. The other daughter contended that the will was procured by 'fraudulent calumny' – the casting of untruthful aspersions against someone else's character which 'caused the discretion and will of the testatrix to be overborn'.

The allegation made was, in effect, that the second daughter had helped herself to a substantial amount of their mother's assets. The daughter who stood to inherit the entirety of the estate claimed that the terms of the will were designed merely to redress the balance between her and her sister, as their mother had always wished to divide her estate more or less equally between them. However, her accusation that her sister had taken assets was untrue.

It is important to note that the will could not be set aside just based on the fact that the mother had the mistaken belief that one of the daughters had taken a portion of her assets. It was also necessary for the Court to be satisfied that the mistaken belief was induced by fraudulent calumny.

On the evidence, the Court accepted that this was the case and that the will was invalid. There being no earlier will, the estate must now be administered according to the laws of intestacy.

Where an estate is worth a significant amount of money, the possibility of conflict is increased. It is unfortunate that the intestacy rules will apply: this could have been avoided had the mother made an earlier will.

For help in ensuring that your will does not end up being the subject of a bitter family dispute, contact us.

Court Corrects Parenthood Bungle

When a same-sex couple undertook fertility treatment which led to the birth of a baby girl, the intention was that both would be listed as her legal parents. However, due to mistakes made in processing the necessary forms, only one of the couple was shown as a legal parent.

An application to the family division of the High Court was necessary to put the matter right.

Official mistakes are generally able to be corrected, and preferably the rectification process should begin as quickly as possible after the error is noticed.

If an official bungle has landed you in a quandary, we can advise you.

Problems Using Family and Friends as Executors

When you appoint a solicitor to be the executor of your will, you can be assured that they will understand their duties and can be relied upon to comply with them. However, as a High Court case showed, the same sadly cannot always be said of friends or family members who are chosen to perform the role.

The case concerned a woman who died in her 70s, leaving an estate valued at more than £240,000 that was left in equal shares to a friend and a neighbour. Her will appointed the neighbour's boyfriend as her executor. The principal asset of the estate was her home, which was later sold by the executor, realising a net sum of about £220,000.

Half of that sum should have been distributed to the friend in accordance with the pensioner's will, but she did not receive any money. After taking legal advice, she launched proceedings and a judge ordered the boyfriend's removal as executor. The friend replaced him as administrator of the estate.

He was also ordered to pay her the money due to her and to disclose documents relating to the whereabouts of the missing funds. He failed to comply with the orders and only at the eleventh hour did he disclose a bank statement, which revealed that all but £1,300 of the proceeds of the house sale had been spent on supporting his own lifestyle.

In cases such as this, it is rare for the lost funds to be recovered. Our experts in this area will be happy to act as executors to ensure everything is dealt with properly, or to advise executors who are concerned about their responsibilities.

Lack of Will Clarity Requires Court to Intervene

The need for a will to be clear is paramount, there being no chance to go back to ask what the real intentions of the person making it were, and when a will made a gift to a charity that was insufficiently easy to identify, the spectre of an Inheritance Tax (IHT) charge arose until the High Court intervened.

The will concerned was handwritten by a Serbian whose estate included three houses. It stated that he wished these to pass to 'the Serbian Orthodox Church'. Unfortunately, it was unclear which Serbian Orthodox Church he meant, there being several possible beneficiaries.

In the end, the potential beneficiaries got together and agreed that the will should be construed to mean the Serbian Orthodox Church in London, of which the man was a member and which is a charity. Ultimately, the Court ruled that the gift should be a gift to that church, on trust for those in need and especially children in Kosovo.

However, the judge's ruling failed to be precise as to exactly which church should benefit and did not take into account that the agreement entered into by the various potential beneficiaries was only meant to apply if the gift was an absolute one, not one to be held on trust.

The result was a trip back to court, where the judge clarified that the gift was an absolute gift to the Serbian Orthodox Church in London, a British charity.

This decision was important because under UK IHT law, a gift to a UK charity is exempt from IHT, but a gift to a foreign charity is not and thus the value of the bequest would have been decreased by the amount of IHT payable.

Our expert legal team is ready to help you make sure your estate passes to exactly who you want it to and tax charges are minimised.

Ripped Off By a Rogue Trader? You Can Be Compensated!

Elderly people and those who are vulnerable are sadly prime targets for rogue traders, but the law is not powerless when it comes to helping those affected. The successful prosecution of a rogue builder promises more than £200,000 in compensation for his victims.

The builder's modus operandi was to con householders, mostly pensioners who lived on their own, into paying extortionate sums for unnecessary work that was shoddily carried out. One victim paid more than £300,000 for work which was assessed as being worth only £1,500.

The builder was ultimately jailed for five years and four months after pleading guilty to three counts of fraud and one of theft. Proceedings followed under the Proceeds of Crime Act 2002 and he received a confiscation order requiring him to pay £217,214. That sum represents the entirety of his available assets and the authorities intend to use it to compensate his victims for their losses, at least in part.

The facts of the case emerged as he challenged the order before the Court of Appeal. He argued that his matrimonial home and a bank account containing about £100,000 were his wife's alone, although both were held in joint names. However, the Court rejected his appeal as entirely lacking in merit.

Court Bypasses Wife's Attempts to Stymie Sale

One of the potential disadvantages of having more than one owner of a property is what to do when they take different views of whether it should be sold. In a recent case, a husband went to court to force the sale of a property he owned with his wife (she having a very small share) when she refused to cooperate and took significant – and successful – steps to scare off potential purchasers.

The wife bombarded prospective purchasers with misinformation regarding the property, designed to persuade them to withdraw their interest in it.

The solution sought by the husband was simple – he asked the court to make sure that the names and addresses of any proposed purchasers and their solicitors would not be revealed to his wife.

The court was able to agree.

If you are faced with an impasse as a result of the intransigence of another person whose cooperation is needed to accomplish a given aim, contact us to explore your options for resolving the situation.

Is a Suburban Garden 'Part of a Dwelling'? High Court Says 'No'

Few words can have been the subject of more judicial analysis over the years than 'dwelling'. In the latest example, the High Court has ruled that a suburban garden does not form part of a dwelling for the purposes of the Public Order Act 1986.

The case concerned a woman who was accused of racially abusing a man over the fence of her mother's garden. Section 5(2) of the Act provides that it is not an offence under the Act if the use of threatening or abusive words or behaviour occurs when the alleged perpetrator and the alleged victim are both inside a dwelling house.

The woman was cleared by magistrates on the basis that the adjoining gardens were each part of the dwelling houses concerned. However, the Director of Public Prosecutions (DPP) disagreed and appealed on the basis that the case raised an important point of law on which the magistrates had erred.

The Act defines a dwelling as any structure, or part of a structure, occupied as a person's home and it was submitted by the DPP that that could not conceivably include a suburban garden. However, the woman argued that anyone sunbathing in their garden would consider themselves at home.

In upholding the DPP's appeal, the Court queried whether the grounds of Blenheim Palace could be viewed as part of a dwelling house and whether someone who stole a gnome from a garden could be described as a burglar. If the

magistrates were right in their interpretation of the Act, anyone could say whatever they liked in their garden, as loudly as they wished, with impunity.

The Court found that it could not sensibly be argued that a garden to the front or rear of a residential property falls within the definition of a 'dwelling'. The gardens in question were not part of the structure of the houses and the magistrates were wrong to conclude that the woman had no case to answer. The case was remitted for reconsideration in the light of the Court's ruling.

Difficult neighbours and arguments over property are common problem areas. Our legal experts can advise you and help you resolve any dispute.

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