Jennifer Margrave Solicitors LLP

The Old Post Office, 130 Epsom Road, Guildford, Surrey GU1 2PX

www.jennifermargrave.co.uk

enquiries@jennifermargrave.co.uk

NEWSLETTER #8 OCTOBER 2017

Welcome

Well, autumn is upon us – these chilly mornings always seem to be a shock to the system! But we welcome back the familiar sights and sounds; Strictly on a Saturday night.

We've had a busy summer which, as always, seemed to revolve around a baking theme.

On 29 August we held a homemade cake sale in aid of AgeUK Surrey and raised the princely sum of £146.92. Thankfully there were not too many left over otherwise we would have had to eat them - well done everyone as always.

Jennifer and Alison, the kind volunteer from AgeUK Surrey, who helped sell our vast selection of cakes in our courtyard sale

Also we were celebrating our second year of winning an award at Guildford in Bloom; see page 2 for further information.

A new team member

We are pleased to welcome Emma Whale who joined the firm on 7 September. She is job-sharing with Anne Hertzell dealing with all conveyancing matters.

Emma will be working on a Thursday and Friday and Anne on a Tuesday and Wednesday.

It is always lovely to have a new face joining the team.

Anne and Emma are always happy to discuss with clients any non-mortgage related conveyancing requirements; perhaps you are thinking of downsizing, moving into assisted living or even a care home, or perhaps buying a property to rent out with a cash inheritance; just give them a call if the need arises

Julie

IN THIS ISSUE

Digital assets

Many of us need to consider what happens to our digital assets when we die. These digital assets can have financial value, sentimental value, intellectual value and social value.

These include emails, electronic documents, music, photographs and video files stored on devices like laptops, tablets and mobile phones. Digital accounts include email accounts, social networking accounts e.g. Facebook and Twitter, online banking, shopping and bill-payment accounts e.g. PayPal accounts and gaming accounts.

Some assets, such as your iTunes library are not owned by you and are not really assets at all, but licences to use a website's services. As a general rule, licences are specific to an individual, are not transferable and will terminate on death - meaning that the 'asset' will not form part of a deceased's estate.

Digital assets have value, not only commercial, but sentimental. Without proper planning, these assets will be likely lost forever upon the owner's death. For instance, would you mind if your thousands of photos uploaded to Facebook, Instagram or Flickr were permanently deleted? - what about those books or articles you have written or research you have been collecting?

We are patiently waiting for the best advice as to how to deal with digital assets and for now suggest at the very least you let someone you trust know how they may access the assets or files or you could leave a note of important details with your will if it is stored safely.

Did you know?

You can add legacy contacts on Facebook and Google so a named person may access your accounts after your death - a legacy contact is someone who you choose to manage your account after you die. If you don't want to have a Facebook account after you have died you can request to have your account permanently deleted instead of choosing a legacy contact.

Login to Facebook (probably easiest on a computer) and go to settings (little arrow next to the '?' near the top right hand side of the screen which brings a drop down menu and choose settings). From there you should go into general account settings and then manage account.

With Google you can choose an Inactive Account Manager. If you log in and go to Personal Info and Privacy you should see 'Manage your Google Activity'. Once you have clicked on that, scroll down and at the bottom of the page you should see 'Assign an account trustee' and you should click change this setting.

Joanne

Guildford in Bloom – the results are in!

On the night of 14 September in the auspicious surroundings of the Yvonne Arnaud Theatre in Guildford Jennifer and Tony Margrave collected our certificate for Best Garden for Wildlife. Tony made our bug hotel from scraps found around their garden. We were very happy to hear that we were in fact a 'Gold Winner'.

Here's someone who thinks it's worthy of a gold medal!

Julie

Can a solicitor release the Will of a mentally incapable client to their attorney?

As clients know, it is of the utmost importance that arrangements are made to have a will in place and also Lasting Powers of Attorneys should they become mentally incapable of managing their affairs.

But a dilemma we face as practitioners is, what do we do if an attorney requests the will? Can we release it?

Obviously in the first instance we owe a duty of confidentiality to the client and personal information, such as that contained in a will, cannot be released without the client's consent; but what if the client hasn't already expressly given this consent to us before mental capacity was lost and they are not able to provide it?

The Law Society recently issued guidance notes to all practitioners relating to these circumstances and the key areas *(source: Gill Steel, Lawskills)* are:

1. We, as solicitors can accept instructions given by someone else where the person providing us with these instructions has the client's authority to do so; our duty of care is to the person on behalf of whom the attorney acts.

2. We have a duty to act in the interests of our client and any will/codicil forms part of the financial affairs of that client unless they provide contrary instructions. This being the case the attorney is entitled to see a copy of these documents.

3. To evidence this fact we are advised to bring up this question of disclosure at the time of clients making a will or even giving instructions for a Lasting Power of Attorney to be prepared.

4. If our clients have given clear instructions that disclosure should not be made then it should not be disclosed unless ordered by the Court of Protection. However, if we, as solicitors, felt that this order it is not in the best interests of a client then we could seek a variation to this disclosure order.

5. If the power of attorney contains any restriction which prevents the attorney from acting until the donor has lost mental capacity then we would need to satisfy ourselves that the attorney has sufficient authority to act, by asking for a medical report that the person has, indeed, lost capacity.

6. If a Deputy has been appointed by the Court of Protection (in circumstances where no power of attorney is in place) then the wide terms of the order would enable that Deputy to see the will.

7. The original will should be retained by us (when requested by clients) as part of the client's papers unless otherwise ordered by the Court of Protection.

Perhaps our clients who haven't previously given instructions should give thought to this potential dilemma?

Julie

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Swearing is an expensive habit

Most/all of us are guilty of having used an expletive at some point in our lifetimes.

But up until 1745, this could have been a costly habit. Under the Profane Oaths Act 1745, the penalty for cursing or swearing was one shilling for 'everyday labourer, common soldier, common sailor and common seaman', two shillings for 'every other person under the degree of gentleman' and five shillings for every person 'of or above the degree of gentleman' - the penalty was double for a second conviction, trebled for a third and so on.

Source: The Law Society Insights

DIY Lasting Powers of Attorney

In August, we were presented with an unexpected scenario when it appeared that comments made on BBC Radio 4 by retired Senior Court Judge of the Court of Protection, Denzil Lush, seemed to oppose people making LPAs.

In his role at the Court of Protection for 19 years he dealt with many cases where vulnerable people were subject to financial, physical and other abuses and he highlighted these problems, to demonstrate why he thought it was better to have a deputy appointed than for individuals to appoint attorneys.

Deputies, he explained, were overseen by the Office of Public Guardian who checked that they were not misusing the patient's funds, and that they were carrying out their duties correctly, whereas an attorney had no such requirement to prepare annual accounts, unless someone raised concerns.

In fact, although he had heard over 6,000 power of attorney cases during his long career, the Office of the Public Guardian statistics show that more than 2.6 million LPAs have been registered. So there are fewer than 0.01% of cases that appeared before the Senior Court Judge Lush due to abuse.

In our experience, most attorneys are anxious to do the right thing in their capacity, and often seek our advice as to how to manage the donor's affairs.

Is it a case of a few bad apples tainting the rest?

However, on a positive note, the comments highlighted the importance of LPAs, particularly to ensure that the right safeguards are in place. The ability for people to do their own LPAs online has made it easier for individuals to make their own LPAs, but it has also meant that people do not have advice about the importance of who they should choose and whether they can include directions for the future.

As with people doing their own DIY wills there is a risk that these documents may include mistakes which will affect their legality but more importantly there is a risk of the 'donor' (person appointing others who are called attorneys) being pressured into preparing the document, and appointing people they may not be comfortable with. Or they may not understand the implications that attorneys can take over their financial affairs, even, in some cases, where they still have capacity. In extreme cases it could be that a fraudulent LPA could be prepared and registered in someone else's name without their consent.

It appears that the Office of the Public Guardian has received an increasing number of referrals where people are concerned about what the attorneys are doing, with the implication that this is because people are not taking the proper advice before preparing the documents.

However the OPG is pushing ahead with the idea of allowing people to make their LPAs in a fully digitalised way, even allowing a digitalised signature.

This obviously raises alarms, and lawyers are in the forefront of querying these proposed systems and trying to ensure that, at the very least, a person must physically sign the document to ensure its validity.

This is why we stress that LPAs are important but that we give advice and talk to the person making the LPA to make sure they know what they are doing; they are happy about who they are appointing and that the document is prepared correctly and is therefore registered correctly.

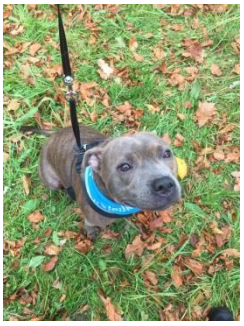
Jennifer

Memory Walk

Team Lacey completed the 7km Memory Walk for Alzheimer's Society at Painshill Park on Sunday 8th October. The event started with a warm up Zumba and an introduction from Ruth Langsford who was taking a well-deserved and worthwhile break from her strictly dance training. It was a beautiful walk and we met lots of lovely people who were walking for their loved ones. Lacey met lots of doggie friends and was very interested in the swans.

So far with online and offline donations Team Lacey have raised £375.00 which exceeds our original target of £300. Donations are still welcome at:

https://www.justgiving.com/teams/Laceypup



Weird and wonderful wills

Rabelais, the French 15th Century satirist wrote his own will. It simply said, 'I have nothing, I owe a great deal; the rest I give to the Poor.'